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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ASTRA/RE-MOR

FRIDAY, MAY 29, 1981



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Bradley, J. J. (St. Catharines L)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Piché, R. L. (Cochrane North PC)
Renwick, J. A. (Riverdale NDP)
Swart, M. L. (Welland-Thorold NDP)

Clerk: Forsyth, S.

Substitutions:

Cunningham, E. G. (Wentworth North L) for Mr. Bradley
Breaugh, M. J. (Oshawa NDP) for Mr. Renwick
Kolyn, A. (Lakeshore PC) for Mr. MacQuarrie
Philip, E. T. (Etobicoke NDP) for Mr. Swart

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, May 29, 1981

The committee met at 11:22 a.m. in room No. 151.

Mr. Chairman: There is a quorum in place, so may the meeting commence? The first order--may I call on Mr. Philip.

Mr. Philip: I have a point of privilege, Mr. Chairman. You may rule that it isn't a point of privilege, but you can't do that until you hear it.

I have just received the rather sad news that a reporter who covered some of the work of the committee, or at least wrote quite a bit about our committee deliberations over the last five years, and who courageously fought cancer, passed away this morning. I hope the committee will express our sympathy at the loss to Virginia Etherington's family, the loss of a person who was not only a good reporter but also a courageous reporter, and someone who will be missed, certainly in the west end of Metro, which she covered and where she mainly wrote her material, but also by members of the committee.

Mr. Breithaupt: The point I had, Mr. Chairman, for the information of the members is that the mother of Mr. Bradley, the member for St. Catharines, passed away yesterday. It so happens she had also been suffering from cancer, and I am sure the members would wish to express their sympathies to our colleague who as a member of the committee, of course, has been active and has been particularly involved in the issues that have been before the committee over the last several weeks.

Mr. Chairman: May I ask if it is normal for the committee to direct the clerk to send any kind of letter or anything from the committee? Is that normal?

Mr. Renwick: Certainly.

Mr. Mitchell: It is quite appropriate.

Mr. Williams: I would certainly like to ensure that condolences from all members of the Conservative caucus are sent forward in both instances to the families.

Mr. Chairman: Can I then take it that it is the consensus of the entire committee that the clerk send condolences to each family on behalf of the committee?

Mr. Philip: With a copy of today's Hansard or the relative portion thereof.

Mr. Chairman: Yes. Thank you.

The first order of business is the motion of Mr. Cunningham

that is in front of us regarding the subcommittee matter. When we left off yesterday, Mr. Swart and Mr. MacQuarrie had made very brief statements, and Mr. Breithaupt was next due to speak.

Mr. Breithaupt: Thank you, Mr. Chairman.

As members will recall, the original motion that was placed before the committee and approved by the committee, as moved by Mr. Williams back on Friday, May 22, was that the committee receive the reports of the Ministry of the Attorney General and the Ministry of Consumer and Commercial Relations, and that in view of the content of those reports, the committee stay any further proceedings on the matter until its first regular meeting in the fall sittings of the Legislature, at which time the said ministries are requested to report further progress on this matter.

Mr. Chairman, as you will be aware, over these last several days there have been other motions placed before the committee in order--from the opposition's point of view--to obtain more information earlier than the fall sittings of the Legislature, which would likely begin the week after Thanksgiving--in mid-October, in other words.

Those motions have dealt with the opportunity for some greater public input and awareness of what the committee has been doing, because the theme and the concern many of us have as to possible negligence in certain activities of the Ministry of Consumer and Commercial Relations will not be considered, certainly by the criminal courts, and will likely, as well, not be considered by the civil courts, except where those matters may have been specifically pleaded in the several actions that have begun.

There were opportunities for this committee to consider further the matters that had been raised, but that motion has been rejected by the majority of the committee. There was a suggestion that the trustees in bankruptcy be brought forward, but that motion was rejected by the majority of the committee. There was then the request for a judicial inquiry as a suggestion, but that was rejected by a majority of the committee.

There was the opportunity for the Minister of Consumer and Commercial Relations (Mr. Walker) to appear and bring us up to date in a more immediate fashion, but that was rejected by a majority of the committee. Finally, there was the reference I made yesterday under the Constitutional Questions Act as a further possibility, but that was rejected by a majority of the committee.

So the various alternatives that are open and were suggested have been dealt with under full discussion, and I think with the view--I would hope with the view--by the government members on the committee that they do wish to have the concerns that have expressed dealt with in due course. The belief exists, and I think can fairly be said to be there, that there is a strong desire to see the civil and criminal actions develop with the prospect of a further opportunity to review the matter in October.

I am prepared to take the government members at their word,

as a number of the committee members have suggested quite openly that they too want to see the problems herein resolved and to make sure that the financial institutions in the province over which we have responsibility are properly run and safely administered.

11:30 a.m.

As a result, then, Mr. Chairman, the original motion which has been put by Mr. Williams and carried by the committee is in place, and the committee will not otherwise have an opportunity to consider these matters until the passage of at least the next four months. There is, therefore, one thing that can be done that I think has some merit and that is suggested by the motion Mr. Cunningham has placed before us. If I may just refresh the members as to the motion, it is, and I quote:

"That a subcommittee of the justice committee be established to: 1. review the transcripts of the January and February justice committee; 2. examine the possibility of contradictory testimony made under oath; 3. report on apparent administrative deficiencies in the Ministry of Consumer and Commercial Relations; and that this committee, cognizant of the motion in the name of Mr. Williams, report to the justice committee when it resumes this fall."

I think it would be worth while to have a summary of the lengthy testimony which occurred throughout the month of January during the hearings of the justice committee in the previous parliament on this general subject of Astra and Re-Mor. As members are aware, there are six or eight rather thick volumes of testimony, and I am sure it will not be practical for every member to review in depth and read the involved details of the hearings that took place.

I think it would be useful to have a small group simply review what has already appeared before the committee. That, of course, in no way can compromise any legal action, but it would be an opportunity to have a summary of information available for the members of the committee when we resume in the fall.

I know there is the comment made by some that we may not review this matter particularly further when these four months go by, but I believe, as things develop, we will have that opportunity. I certainly hope that will be the case. It would not be useful for us to begin that review, or at least be brought up to date as to whether we should continue in this matter, unless we have some opportunity to see a summary of the information the previous justice committee had before it.

I am in favour of the motion. I think it is a reasonable one and would bring the members up to date and have that information available to us in the fall. It certainly will not compromise in any way the civil or criminal actions, because we are not doing anything more than summarizing the material that has already come before the committee. It will be available to all the members at that point, and I think it would be very useful to have. What is even more important, the motion now before us in my view does not in any way contradict the wishes of the committee, as they have

now been expressed, that the committee stay any further proceedings on the matter.

I suggest to you, Mr. Chairman, and to the members of the committee that making a summary of what has already been done by the committee in no way would be considered proceedings, as it is in no way dealing with witnesses or with new information. It is not involving the public nor in any way compromising the actions which may be before the courts, either under civil or criminal jurisdictions.

If the hearings of the standing committee on justice back in January may be cited as in any way removing or compromising the rights of certain accused or certain defendants in civil actions, then that will happen whether or not we have any summary made of the things that have already been done. That is already water over the dam and whether the hearings have a positive or negative effect on the results of civil or criminal matters is beyond our control at this point. The courts will have to decide on that and I am sure they will in due course if the matters are raised.

I think it is useful for us to have a summary of the material. I hope the members will see the usefulness of that so that in the fall, when we return, there would be something available to the committee members, when the decision is made at that point to proceed or not.

Mr. Mitchell: Mr. Chairman, it is unfortunate that I was not able to be present yesterday when the motion was introduced because, quite honestly, I would have expressed the opinion that the motion in itself is completely out of order.

If I may speak to some of the points raised in the particular motion, the first part of it says, "review the transcripts of the January and February justice committee." Mr. Chairman, those documents are available and, quite frankly, I do not feel the need to strike a committee to be able to go through those documents and review them. Everyone has them, they are available to everyone.

Second: "examine the possibility of contradictory testimony made under oath." Again, all that information is in Hansard and was duly reported. To reiterate, that material is in the hands or could be in the hands of every member.

Third: I think the motion is contradictory to the tasks that in my opinion were designated or indicated by the Williams motion, which basically stopped any further discussion on this matter until the fall. I feel we should be getting on with the further business of this committee and dealing with it.

I think all the questions that are raised in those motions are clearly available in the Hansard records that were produced during the hearings in January. In fact, I feel that if the committee as it was at that time--and I have stated this before--was able to come up with a report to be introduced at five minutes to two on February 2, then in all honesty its decision has already been made.

Mr. Breaugh: With a little bit of reluctance, I want to support this motion. The reluctance is fairly natural on the part of an opposition member. The obvious preference would have been to proceed with the matter at hand. It had been dealt with by a previous committee, the groundwork had been laid and it would certainly expedite matters if we were able to find a mechanism whereby the committee could bring itself to deal with the matter.

I think it is clear that the majority of the committee is not prepared to deal with it now. The government members on the committee have made it clear they intend to blockade discussion of the matter at this time. They are not prepared to deal with it now. They want some distance between the heat of the day and the occasion when the committee will get the opportunity to discuss it.

I regret very much some of the wrangling that has gone on in this committee over the last few days. I think some extremely unfortunate precedents have been set. Many of us would be prepared to say, though, that it is a new committee with several new members who are not terribly conscious all the time of the precedents that they are setting. The moves to declare things out of order, to silence opposition members and the unwillingness of the chair to hear a countering opinion are unfortunate things, but I think in the beginning of a new parliament they are things that are going to happen with people who have not spent a great deal of time on procedural matters.

Perhaps it would be best now to see if we can find some means whereby we can get a resolution of the issue. If the government is determined to maintain its current position, the means at hand would be for the opposition simply to maintain some kind of ongoing procedural argument. In other parliaments, those procedural arguments have gone on for lengthy periods of time. We could do that.

I don't think there is any reluctance on the part of the opposition members here to exercise any technique that might blockade the business of the committee to keep the issue alive, even though at some time those techniques might reach a degree where they don't seem to make a great deal of sense, other than that the opposition is doing what an opposition party traditionally does, which is to poke and probe and object and not yield to the government of the day.

11:40 a.m.

We used this concept of subcommittees in the previous House on a number of occasions. Quite frankly, we found when the committee was not formally in session--that is when the members were not formally putting party positions or conducting that kind of argument--one could often move without the heat of Hansard and all of that media glare on you to find some common ground. I see the motion before us now as an attempt--perhaps a last-ditch attempt--to do that, to set aside the heat of the day and to see if something of a constructive nature could be done.

It strikes me that the motion before you suggests it would be a good idea to pare down the amount of material which would be

in front of the committee, to get a little more specific about the kind of action that might be taken. In other words, it would define, clarify and lay out the ground rules for the hearings that might take place in the fall. I must say in my experience we have had some success with subcommittees doing that. We could get agreement. There was an opportunity for some give and take, to outline precisely the nature of the material going before the committee, the alternatives available to the committee members and a chance to define how the hearing would proceed.

The end result was that everyone began the process with the same set of material in front of him, which is a useful exercise. It rather takes away the fact that some members may choose to introduce material that is a little more far-ranging than other members may choose to use. It also attempts to put a little structure and some guidelines before the committee and you arrive at that consensus before the hearing starts. We found it to be a useful device.

I tried to think what would be the counterargument to any of this and I can't find much substance in them, other than the traditional position of the government blockading an inquiry of this kind. I think that would be unfortunate. There are even some members on the government side who would like to see the matter dealt with fairly, reasonably and with some rational thought behind it. Although the motion is not entirely to my personal liking and obviously not my first preference in the matter, it is a technique that will get the committee out of its bind, and that is now important.

The motion does somewhat accept the position that the government members are not prepared to allow discussion on the matter now. It seems to me to fit into the time frame that has been suggested by the government members. I think it is important to settle this now, unless you choose to go on for the next four or five weeks with procedural wrangles and set aside other business that is on the committee's agenda. It is an option that opposition members could use; it is hardly a new idea; it has been practised many times in many parliaments and it could certainly be practised here. But I sense from the last two or three days of this committee's work that there is a good deal of frustration emerging from all sides.

I would like to see this motion put now with support from all members, if only for the purpose of getting this committee back on track and setting down certain things we are prepared to do. If we strike a subcommittee, the subcommittee will go away and do its work over the summer and when the matter is then brought back before the committee in the fall session we will have the groundwork laid out, we will know what the committee is prepared to do and what it is not prepared to do, and we will have the substance and structure of that set of hearings clearly defined. I think that will be a useful exercise.

It strikes me that this is a last-ditch effort to try to resolve the problem before the committee. I believe it can be supported on that basis. I don't believe it is the ultimate motion that could go before the committee, but I find it acceptable. I

hope a little bit of calm will enter into the picture on all sides and a little of the hysteria of the last two or three days will dissipate so that you might order the business of the committee in a slightly more rational way, and provide for some structuring of those hearings in the fall.

It would be my concern that we could--it is quite possible--go for the remainder of this spring session on procedural arguments alone, and then when you come back in the fall and the matter is again on your agenda, you will not have done the preparatory work that would give us a clear and succinct attempt to rectify the matter that is before the committee. I think that is of utmost importance. Frankly, I can't find anything in this motion which should be offensive to anybody. It seems to me to be a most innocuous piece of business.

I can't see why you would object to a subcommittee that would suggest the committee order its own business. I can't see any basis for your objecting to some review of previous materials that were put in front of the committee. I can't possibly see why you would object to any kind of examination that some wrongdoing might have occurred. On that basis, as a compromise of the last resort, I find the motion acceptable, and I hope that on all sides members would stop and think that there isn't anything in here which is going to damage anybody. In fact, it is perhaps one of the few ways left for the committee to proceed.

Mr. Cunningham: Mr. Chairman, I made this motion as innocuous as I possibly. In summarizing, I don't believe this in any way impinges on the doctrine of sub judice. It will not interfere with the judicial process in any way. I believe it would provide a useful summary for members who would not be inclined to read the six volumes, which are each several inches thick. I can't blame the member for not wanting to get involved in that, although I should digress and say it is very interesting. If you had not been on the committee, you would find the volumes to be very instructive.

Most certainly I think the work of a subcommittee in a nonpartisan, very common, rational manner could clarify things and offer a report, especially for the new MPPs who are on the committee. Should the committee as a whole decide, it may well serve as the basis for a final report.

I think it would be instructive to go over some of the concerns of the committee just prior to the call of the election. Mr. Bradley, in his motion, indicated that the committee regretted it had been unable to complete its inquiry and it believed a great deal of information remained to be placed on the public record, information which would clarify what went wrong in the Montemurro affair and why. It believed that on the basis of the documents available but not yet on the public record, this information would not place the government in a favourable light.

As well, the committee indicated on the basis of evidence received that serious maladministration of relevant provincial laws had occurred with respect to protecting the public against

the activities of Carlo Montemurro and his various associates and corporations.

Mr. Chairman, I really do believe it is the function of members of the Legislature, more specifically members of this committee, to involve themselves in a detailed scrutiny of provincial legislation pertaining to consumer protection that falls under this secretariat. It is not the function of the courts, either in a civil manner or in a criminal manner, to correct or rectify administrative or legal deficiencies that occur here; that is our job.

I am cognizant of the concerns of the member for Oriole and other members with regard to sub judice, and I can tell you that even in the fall when we were contemplating having this matter put to the Legislature, we were very concerned about that and very wary about it. In fact, many of us had some very sober second thoughts when we read several of the columns of Hugh Winsor, who questioned whether or not we should be involved in such a matter. It caused us to reflect in a very serious way on what we were doing. Winsor, in my view, vindicated the comments that he made in a subsequent column.

I would think and I would hope that members of the government party would be cognizant of the comments and message of the member for Osnawa with regard to what this is doing to the disposition of this place. Frankly I think it is not constructive and can only serve to see at a very early stage in this Legislature divisions that may well last for a year, two or even the full term of this government. I do not believe that will be in the best interests of the public who elected us to serve them.

11:50 a.m.

I regret, Mr. Mitchell, that you feel inclined not to want to support this. Even though the transcripts are available, I seriously doubt that members of the committee have either obtained them or have taken the time to examine what is in them. Having sat on this committee, frankly I am alarmed that people who have testified before us have very serious conflicting testimony, testimony made under oath to a committee of the Legislature in the province of Ontario, and if it does not disturb you, Mr. Mitchell, I want you to know it fundamentally disturbs me.

From my own point of view, I sensed there was conflicting testimony in the testimony of at least one individual on separate occasions when that individual testified before this committee, notwithstanding the fact I believe as well that there were conflicting statements made by several civil servants. I want you to know that this matter is not going to go away.

I hope and I trust that Mr. Williams is sincere when he suggests the committee will possibly re-examine this in the fall. I want to state to you very clearly that I believe a summary, maybe a 25-page or a 40-page summary, done in a nonpartisan way over the course of the summer, in camera, privately by three representatives of this committee, one representing each party, would in my way serve as possibly the basis for a final report.

Certainly it would clarify a number of things and provide a very valuable summary so that we could hope to be able to proceed with this in the fall.

I ask you to consider this motion very seriously in the spirit it has been put. As I have said before, I do not believe this matter will go away. I would hope you have read this morning's admonition in the Globe and Mail, which I am not going to put on the public record. It is an admonition that I believe other members of the press, as well as members of the public, share on this matter.

Mr. Bradley stated his views on the politics of this matter and I agree with him. The political climate is not in favour of the Re-Mor people and I think you may well sense that. The average individual in Ontario feels possibly that they were speculators, or that if they have lost some money, that is their tough luck. But the realities of it, gentlemen, are this: Several fundamental pieces of Ontario legislation were breached, abrogated, ignored, and I do not believe we can set aside our responsibilities much longer on this. The work of the subcommittee could be invaluable in setting to rights things that are very wrong.

Mr. Philip: Mr. Chairman, there are a number of newly elected members on the committee and I would like to address myself primarily to them because I think the other members do know what in fact happened. On that eventful night when the resolution that I introduced on behalf of the committee was accepted, there was extensive debate. The major theme that came through on that debate and the major points that were made were that this was a political matter that was being discussed, not a judicial or quasijudicial matter. Mr. Cunningham's resolution basically deals with the role of government and government agencies. It does not deal with anything else.

The other point is that the resolution sending this matter to the committee in the first place was passed unanimously by the House, so it was all three political parties that sent this matter to this committee. I am not one of those who would be so foolish as to suggest that the Premier (Mr. Davis) called the election to cover this up--he had a number of other reasons for calling the election and I am sure that this was not paramount in his mind when he called it--but none the less the election was called at an unfortunate time for this committee. It did interrupt work that was very valuable and that was ongoing. All this resolution does is ask that the committee complete its work, nothing more.

Those of us who experienced the initial days of that committee know that at first it seemed like a very partisan matter, something in which there were Liberals and the NDP on one side and the Conservatives on the other. However, once that subcommittee was set up to examine the records, consisting of Mr. Sterling and a researcher from his caucus, there was fairly interesting co-operation. Indeed, Mr. Sterling came to me on a couple of occasions and said, "The polarization that originally existed no longer exists. We seem to be progressing."

About Michael Davison, whom they thought was a hawk and out

to get someone's throat, Mr. Sterling said, "He is co-operating. It is great that the three parties can at least work out some arrangements that are acceptable to everyone."

There were some bitter moments after that when the whole committee got into the work of the subcommittee. But I want to point out to you that what we are asking you to do is to set up another subcommittee consisting of a representative of each of the parties. What we are asking you to do is to go in depth into completing the work that the committee had started. In fact, any conclusion or any information that is produced by that committee will have to be ratified, will have to be voted on by the committee as a whole when we reconvene in September so that there is no opportunity, if you like, for the NDP and the Liberals to gang up, because when the matter comes back to the committee, the Conservatives will have a majority on this committee.

So if I were a Conservative now I would say, "I see no threat to anything that I stand for; in fact, I have everything to gain by co-operating." I urge you to consider that a lot of money and a lot of time has been spent by the former justice committee on this matter. For heaven's sake, let us not waste those efforts and all of the work that has gone into it, and help us to complete our work.

Mr. Chairman: Thank you, Mr. Philip. I have no other speakers on this matter so I therefore take it that it is in order to call the question.

Mr. Cunningham: I would like a recorded vote, Mr. Chairman.

Ayes

Mr. Breaugh, Mr. Breithaupt, Mr. Cunningham, Mr. Elston, Mr. Philip--5.

Nays

Mr. Andrewes, Mr. Gordon, Mr. Kolyn, Mr. Mitchell, Mr. Piché, Mr. Williams--6.

Motion negatived.

Mr. Williams: Mr. Chairman, do I have the motion before you?

Mr. Chairman: Yes, you have, Mr. Williams. Excuse me, Mr. Williams, there are photostats here.

Mr. Williams: I will read it while it is being distributed, in keeping with the spirit of earlier discussions by members of the committee. It is a very straightforward one but nevertheless it is just to conform.

Mr. Chairman: Mr. Williams moves that the justice committee proceed with its order of business, being the estimates

of the Solicitor General (Mr. McMurtry), followed directly by the estimates of the Justice secretariat.

Mr. Cunningham: Mr. Chairman, speaking to the motion, is that matter printed on today's Order Paper?

Mr. Chairman: No, it is not.

Mr. Cunningham: May I ask you why it is not?

12 noon

Mr. Chairman: Yes, I can perhaps clarify that. First, yesterday the clerk of the committee asked me what we would put on the agenda for this morning. I again made an arbitrary decision that we would have the first hour on your motion and, thereafter, go to the estimates of the Solicitor General. I had forgotten when I said that the Solicitor General did have to be away at 12:30 to go to the Ontario Police College. I had known about that for the best part of a week. So, therefore, I believe when the clerk did whatever clerks do to set the agenda, somebody reminded him of that.

It would have been ridiculous to re-adjourn to that at 12:30 for him only to leave at 12:30. So, therefore, I believe that's why only this matter was set on the Order Paper for today. Moreover, I believe, Mr. Cunningham, that anything can be brought up whether or not it is on the Order Paper.

Thank you. Mr. Williams, continue.

Mr. Williams: I have no further comments, Mr. Chairman. It's self-explanatory.

Mr. Breaugh: Again, I don't suggest that you have done this intentionally but normal courtesy would dictate that opposition critics would be told whether or not estimates are before the committee. I asked my whip this morning. No communication had occurred there. I asked the Solicitor General this morning as to whether or not his estimates would be before the committee and he didn't know.

With all due respect, Mr. Chairman, there does need to be a little bit of communication here. The minister is not here, obviously, and the estimates cannot proceed in the absence of the minister. A little bit of notice wouldn't have hurt anybody. I am not quite sure what the purpose is of the motion before you but, as I read it, it says that when the motion carries we will proceed with estimates, which we cannot do because there is no minister, no staff. It isn't going to happen. As you just said, the minister has gone off to the police college. I don't have any objection to the motion per se except that it's a motion which can't succeed.

I think what Mr. Williams means is that at the next meeting of the committee we would begin by doing the Solicitor General's estimates and, when we complete that, we would move to the next order of business which is the estimates for the Justice

secretariat. If that's what he does mean, perhaps that is what he should have said.

Mr. Williams: Certainly the intent of the motion itself is self-evident and I think once the motion is carried, if it is carried by the committee, I would presume that normally, yes, we would go on with the estimates.

The chairman now advises that it is physically impossible for the Solicitor General to be here, or if he were available he would be here for a matter of minutes and he would have to leave again because of the earlier commitment. So I presume out of courtesy and common sense, as Mr. Breaugh suggested, it would be appropriate to entertain a subsequent motion of adjournment and then proceed next Wednesday, as you have indicated, in the normal way.

Mr. Breithaupt: Mr. Chairman, possibly one way of doing it would be for Mr. Williams to amend the motion by adding the words "on Wednesday next" after the word "move"--or they could come in after the word "proceed," however he wished to do it--so that everyone would know the intention of the order of business next week. If that's the intention and if the Solicitor General isn't available today, then the motion may as well be a complete one, if that's suitable.

Mr. Chairman: Mr. Williams, do you agree with that being placed in the motion?

Mr. Williams: If it is the understanding of the committee that, on the advice of yourself, Mr. Chairman, the Solicitor General isn't available, and it is the understanding of the committee that this motion, as amended, carry, so that we would adjourn and there would be no further business of the committee available before us.

Mr. Cunningham: That is not my understanding of what the motion says.

Mr. Williams: If there is any dispute over the wording of it, I will just leave it as it is and vote on the motion.

Mr. Chairman: It is therefore left unamended. I believe Mr. Mitchell indicated he wished to speak to that. He is the only hand I have seen.

Mr. Mitchell: No, Mr. Chairman. I was away yesterday and, as the rest of the members have said, I did not see it on the Order Paper. I didn't know, for example, that we weren't discussing it and I think most of us brought our documents today. I found out about it shortly before I entered the committee today. I think the chairman has made quite a straightforward statement. I just found out about it before I walked in here.

Mr. Breithaupt: Might I ask, Mr. Chairman, is that amendment to be made so that we would proceed on Wednesday? Is that the intention?

Mr. Chairman: Apparently not.

Mr. Breaugh: I will move that as amended.

Mr. Chairman: Mr. Breaugh moves that the words "on Wednesday next" be inserted after the word "proceed."

Mr. Breaugh: Surely to God you cannot object to that.

Mr. Chairman: I see no one who wishes to speak to it further. Therefore, the question is upon the amendment. Shall we have a vote upon Mr. Breaugh's amendment that those three words be added?

Mr. Williams: I do not like to nitpick over the matter and have us get into a long debate over the matter of a word or two that really accomplish the same end purpose.

Mr. Cunningham: What is the purpose?

Mr. Williams: The purpose of the motion is simply to get on with the business of the estimates. That means that at the first available time that the Solicitor General is available for that purpose, the committee would proceed.

Mr. Breithaupt: He is not here today.

Mr. Williams: As I indicated earlier, I think it would be appropriate, subsequent to this motion, to entertain a motion of adjournment until the next regular sitting day. Then I am sure the minister will be here.

Mr. Philip: You of all people should know how to vote a closure motion.

Mr. Breithaupt: That may well be the case depending on what happens with this motion. If it is the intention--and we all know the Solicitor General is not here--that we are going to proceed on Wednesday with the Solicitor General's estimates on the presumption that this motion carries, why not just put it in the motion that that is the intention? I do not understand why not.

Mr. Chairman: Is there any more discussion on the amendment?

Mr. Williams: I will not support the amendment.

Mr. Breaugh: Are you prepared to accept the amendment if we insert the words "on Wednesday next"?

Mr. Williams: There have been no assurances from the committee.

Mr. Breaugh: If you want to play games, let's play games. Let's get at it. How in the world could you object to a simple motion that next Wednesday we pick up the estimates? Your minister has been cooling his heels out in the hall for the last two days. Surely to God it is not beyond your powers of

comprehension to move a simple motion ordering next Wednesday's business. How can you possibly object to that? Do you like to have your minister and his staff parade up and down in the hall out there? Is that your purpose in life?

Mr. Chairman: Mr. Breagh, we are getting contentious. I believe Mr. Williams was not willing to accept your amendment. Therefore, if there is no further discussion, shall we vote on the amendment if those three words are to be added to Mr. William's motion?

Motion negatived.

Mr. Chairman: On the main motion, the question on Mr. William's motion.

Motion agreed to.

Mr. Chairman: The motion is carried six to two. That finishes that. I am sorry, Mr. Andrewes, before you speak, the next motion that was handed to me was Mr. Mitchell's motion. You can read it.

Mr. Mitchell: It says, "Moved that we adjourn."

12:10 p.m.

Interjection.

Mr. Chairman: No, this was given to me at approximately 11:20 as I came in, and then I have another one that was given to me at 11:38 by Mr. Breithaupt.

Mr. Cunningham: I don't know how a motion to adjourn can be in order in advance of business that the committee was going on with, especially in view of a substantive motion by Mr. Breithaupt.

Mr. Chairman, on a matter of privilege, this is closure.

Mr. Breagh: On a point of order, Mr. Chairman: This committee has passed a motion that it proceed with the estimates. I have a question for you: Where the hell is the Solicitor General?

Mr. Chairman: The chair is moving into the picture at this point. If you wish--and I can see some reasonableness to Mr. Cunningham's remarks as to the adjournment motion being given to me at that point; it doesn't state at what point the adjournment is to take place. Fine, I will go along with your comments as reasonable. Therefore, I guess I will rule Mr. Mitchell's motion out of order. Then, I have in front of me a motion, right now, by Mr. Andrewes, which I stated was premature or out of order at that point. I will now entertain his motion that is thrown up in front of us.

Mr. Andrewes moves the committee be adjourned.

Mr. Cunningham: They are the same motion. There has been no intervening business between identical motions. I believe that

the next order of business must be the motion put by Mr. Breithaupt that you have in front of you.

Mr. Williams: You have a motion before you that is not debatable. It is a motion to adjourn.

Mr. Chairman: Yes, that is nondebatable and must be voted on at this point if it is to carry. Is it not the procedure that if someone else disagrees with it, there is then a question on that without intermediate discussion?

Mr. Breaugh: I want you to respond to the point of order. The majority of the members of this committee--I was not in favour of the motion--but the majority just passed a motion saying that you are now going to proceed with the estimates. Where is the minister?

Mr. Chairman: But do you not think that the motion to adjourn takes priority over all others? I believe the standing orders state that that must be dealt with forthwith. Like a point of order or of privilege, a motion for adjournment must be dealt with forthwith.

Mr. Breaugh: No, Mr. Chairman, that is not correct. The majority of this committee passed a motion. You just voted to proceed with these estimates. You cannot thwart that. You cannot move on to a motion to adjourn or anything else until you deal with that motion. That was what you wanted. That is what you got. Get the Solicitor General in here and start up the estimates.

Mr. Chairman: The Solicitor General is not available. We know that. I have a point of order which I believe is obstructionist. That may be the incorrect word but it is facetious. The point of order, Mr. Breaugh, is--

Mr. Breaugh: Mr. Chairman, how do you call it facetious?

Mr. Chairman: Because you know that he is not here and cannot come in.

Mr. Breaugh: The committee just ordered its business, which is the right of a committee to do. After it orders its business, it then decides it will not do that. I do not mind being called a few things but that is not facetious. The committee members who voted for that previous motion did so with full knowledge that they could not proceed. There is a lot of stupidity on that side. I do not mind that, I am quite accustomed to that; but if you are going to move motions in, at least--

Mr. Chairman: No, I am calling order. Order, please. Mr. Breaugh's point is not a point of order. The chair has so ruled. I have now in front of me a motion of Mr. Andrewes to adjourn. It has been disputed; therefore we will vote on his motion to adjourn. Recorded vote.

Ayes

Mr. Andrewes, Mr. Gordon, Mr. Kolyn, Mr. Mitchell, Mr. Picné, Mr. Williams--6.

Nays

Mr. Breaugh, Mr. Breithaupt, Mr. Cunningham, Mr. Elston, Mr. Philip--5.

Motion agreed to.

The committee adjourned at 12:15 p.m.

Lacking nos. 9 - 14, 1981.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CONSOLIDATED HEARINGS ACT

WEDNESDAY, JUNE 17, 1981



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Bradley, J. J. (St. Catharines L)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Piché, R. L. (Cochrane North PC)
Renwick, J. A. (Riverdale NDP)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Breaugh, M. J. (Oshawa NDP) for Mr. Swart
Charlton, B. A. (Hamilton Mountain NDP) for Mr. Renwick
Gillies, P. A. (Brantford PC) for Mr. Gordon

Also taking part:

Kerrio, V. G. (Niagara Falls L)
Philip, E. T. (Etobicoke NDP)

Clerk: Forsyth, S.

From the Ministry of Environment:
Norton, Hon. K. C., Minister

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, June 17, 1981

The committee met at 10:16 a.m. in room No. 151.

After other business:

CONSOLIDATED HEARINGS ACT

Consideration of Bill 89, An Act to provide for the Consolidation of Hearings under certain Acts of the Legislature.

Mr. Mitchell: Mr. Chairman, in the House last evening, as we are all aware, the consolidated hearings bill was passed to this committee. Mr. Norton is in attendance here this morning. I suggest that since he is in attendance, the committee should discuss how to proceed.

Mr. Chairman: Gentlemen, we have several things in front of us at the present time. We have--for want of something better to call it--the consolidation bill under the Environmental Assessment Act and various other acts, we have the Fire Marshals Amendment Act and while the minister's estimates were proceeding, I received two motions from Mr. Breithaupt dealing with neither of those but with other matters.

What is your pleasure today? What shall we proceed with?

I understand that the Minister of the Environment (Mr. Norton) is here in the room with his officials, prepared to proceed with the consolidation bill.

Mr. Williams moves that the committee proceed in that fashion.

Mr. MacQuarrie: I would like also to speak to the Fire Marshals Amendment Act.

Mr. Breithaupt: Mr. Chairman, in rereading the debates last evening--I was not there for the opening part of the debate on Bill 89--it was agreed, as I understood it, that certain groups would have to be given notice of proceeding with the bill. If they are informed today we could proceed with that bill in the usual committee time, beginning tomorrow afternoon. Those groups could be present, the minister and his staff could be here and we would be able to use the time to good advantage.

If we are just to deal with certain points that were raised in definition--the matter of who had standing before the committee and such like--then it does not seem very useful to begin for an hour and repeat it all again tomorrow with the Canadian Environmental Law Association, Pollution Probe and others that might have an interest. Would it not be better to do it all only once?

I think, depending on how much time the committee is going

to spend, or how much time it may be necessary to spend, that tomorrow afternoon and Friday morning may be needed to complete it.

Mr. Chairman: Mr. Breithaupt, do you or any other committee members have a list of groups or organizations who wish to appear before us on the consolidation bill?

Mr. Breithaupt: I have one individual whom we would ask to appear. He is a lawyer, Mr. Harry Poch. He is very much involved in environmental matters and I know that he particularly has an interest in this bill. We will arrange to contact him so that he will be available, if possible, to attend before the committee.

Mr. Chairman: You mentioned two other organizations.

Mr. Breithaupt: These were organizations that I understood last evening had an interest; the Canadian Environmental Law Association and Pollution Probe. I do not know who should be contacting them or if indeed they are interested, but it was mentioned they are the kinds of groups that might have an interest in this matter. Obviously it is nothing we could start very easily in their absence. Yet I realize that we have to get on with this as soon as we can.

Mr. Chairman: Mr. Charlton, do you have any other names to give the clerk so that he might contact them?

Mr. Charlton: Yes, Mr. Chairman. There are two other organizations that I think would be useful for the committee to hear from. The Association of Municipalities of Ontario is one of the groups that I understand has been very much in support of the legislation and CONE, Committee on the Niagara Escarpment, since that is one of the pieces of legislation that is covered by the act. They have a number of other environmental interests as well.

11:50 a.m.

Mr. Chairman: Are there any other names that you are aware of, keeping in mind that the House has, in the wording, vested us with bringing back a report on or before Tuesday--keeping this in mind?

Can we then take it that those five organizations are the total of those to be contacted?

Mr. Breithaupt: Four organizations and one individual person.

Mr. Chairman: Right.

Mr. Breithaupt: I do not know of other people who may have an interest, and certainly within the time available I do not know how you can notify them. You cannot publicize or do anything like this. We will just have to try to do the best we can.

Mr. Chairman: Yes. Our frame of reference does not give us time for province-wide advertising or anything like that. So,

we must go with those as the persons who the committee are interested in having before us.

Whether we start without those persons and organizations present, or whether we wait until they are present is at the pleasure of the committee. We have the fire marshal's bill and there are several persons who wish to speak to that and see that coming on quickly, Mr. Renwick in particular.

All right, we now have Mr. Williams, Mr. Bradley and then Mr. Charlton.

Mr. Williams: Mr. Chairman, I have not seen the Instant Hansard of the proceedings last night in the Legislature, so I do not know what the precise direction was. I was not aware of the fact that the bill had been referred to the committee specifically for the purpose of entertaining deputations and submissions from outside persons.

Mr. Chairman: It is not specifically for that purpose, Mr. Williams. It does not refer to deputations one way or the other.

Mr. Williams: I think that Mr. Breithaupt himself suggested that this was in itself only a suggestion by a number of the speakers on the bill last evening, so this would be done in a gratuitous fashion, rather than under direction from the House that we would be inviting people who have an interest in this bill, to come before the committee.

If it had been otherwise, if it was a clear direction from the House to have the bill before the committee for the purposes of formal advertising to the public at large to make representations, then it would be most appropriate to stay the matter until those procedures could be implemented.

Mr. Chairman: Mr. Williams, we have no choice here. The committee is the master of what it wishes to do within the framework of the reference from the House. The House has told us to deal with the matter and report back no later than Tuesday. Within that framework, we can do what we wish so far as having witnesses or otherwise is concerned, but we must stay within those references from the House.

Mr. Williams: I had not concluded my observations, Mr. Chairman. I was simply going to say that in view of the fact that there was no specific direction to the committee to entertain outside representations, I feel it would be appropriate and in order for the committee to proceed to deal with the bill.

That does not mean to say that we would deny anyone the right to come before the committee if the committee felt that there was some justification in so doing. Allowing for the fact that the minister is here with his staff people, I think it would be totally inappropriate not to proceed.

The direction has been given by the House. The time parameters are somewhat constraining, and with the minister here I

think that we indeed should proceed. On that basis, I would simply move that we proceed as this being the next item of business on the agenda--to deal with Bill 89.

Mr. Chairman: All right. Thank you.

Mr. Breithaupt: May I make one comment, Mr. Chairman?

Mr. Chairman: Yes.

Mr. Breithaupt: Certainly it was my understanding that there was no agreement by the House leaders--nor was it presumed last evening, in response to my question--that this must proceed this day. It certainly has to be completed by Tuesday. It was mentioned at that point that there are groups that are interested and surely we should at least give them the courtesy of a few hours' notice. We have the opportunity of sitting on Thursday and Friday and, as I understand it, also on Monday next if necessary. That surely is sufficient time.

The spokesmen for both opposition parties agree with the bill in principle. It is simply a matter of having the opportunity for those involved to raise some points before the committee. I just do not see any requirement that we go ahead, particularly in this next hour, when in fact what we will do is repeat it when the same groups are here.

Mr. Charlton: On this particular matter, Mr. Chairman, when the matter was discussed yesterday with the minister and with the House leaders it was on the understanding and for the purpose of having some input--not lengthy and fully-open public hearings advertised province-wide, as we do in many cases, but for the purpose of having some input--from organizations that are involved in the processes which we are dealing with in this bill. I think that was the basis on which the agreement was reached last evening, or yesterday afternoon.

In the light of that it seems to make sense, in terms of what Mr. Breithaupt is saying about contacting the organizations that have been mentioned and attempting to proceed tomorrow afternoon and Friday morning, and perhaps even again on Monday if it is necessary, so that we can fulfill our obligation to the House to report back by Tuesday and, at the same time, deal with some input, in terms of some of the sections of this bill.

Mr. Breithaupt: Perhaps we could hear from the minister and see what he would prefer.

Mr. Chairman: Yes.

Hon. Mr. Norton: I was certainly party to the preliminary discussions yesterday that led subsequently to a meeting, I believe, among the House leaders of each of the parties.

Certainly part of that discussion consisted, first of all, in a request for the bill to come before the committee so that it would be examined, presumably on a clause-by-clause basis. In

addition to that there was a request that some--and a limited number was specified--groups with a particular interest might have an opportunity to appear before the committee.

Although that may not have been spelled out in any particular reference from the House, I think that was clearly understood to form part of the purpose for the referral.

I realize that I am very much in the hands of the committee. I am not attempting to give the committee direction but I think it is fair that that ought to be acknowledged and on the record for the committee to consider in its deliberations.

There is one additional thing I would raise as a potentially complicating factor, from my point of view and, I suppose, that of certain other members of the committee. We do have another bill which is next on the Order Paper following the matter presently in the House; in other words, the Ontario Waste Management Corporation Act, which may be called for second reading in the House this afternoon. Given the interest in it, I would not be surprised if it continued into tomorrow. I am not sure how we would handle that--

Mr. Charlton: That will be tomorrow evening.

Hon. Mr. Norton: Tomorrow evening? If that is the case, then there should not be any--

Mr. Breithaupt: That should not be a problem.

Hon. Mr. Norton: That is right. That should not be a problem.

Mr. Breithaupt: If the committee sits tomorrow afternoon and Friday morning--that is here--it should work out just fine, I suggest.

Mr. Williams: May I just, through you, Mr. Chairman, ask the minister if he feels there would be some duplication of effort, as suggested by Mr. Breithaupt, if you were to proceed, as I presume you are prepared to do, today, without the benefit of having these other interested parties before the committee.

Are there certain aspects of the bill that we could be dealing with today, allowing certain sections of the bill which may be contentious, say, to stand down, pending the presence of these interested parties?

12 noon

Mr. Breithaupt: Perhaps we could hear from the minister on this.

Mr. Williams: I do not have the benefit of the transcripts. I do not know which are the areas of the bill you people seem to have identified as having particular interest. I thought those areas might have been identified.

Mr. Chairman: Go ahead, Mr. Minister.

Hon. Mr. Norton: We are prepared to proceed if that is the wish of the committee, although the record will show that there are certain sections about which members expressed concern in the debate last night. It would be up to the members of the committee, I believe, to consider whether they would want to deal with any of those in advance or during the appearance of the delegations. They may feel that hearing the delegations would highlight some of those concerns and perhaps there are additional concerns they would wish to address in a clause-by-clause consideration.

Mr. Breithaupt: One would think so, particularly since only one of the five or six members who spoke on the bill is here this morning. They may still be here, particularly our critic, Mr. Kerrio, and Mr. Renwick, who spoke on the bill. Mr. Swart and others may also wish to be here.

It seems to me a convenient way of sorting out the matter. It may well be that only those sections which were referred to will be of interest, but we do not know what other groups will say until they are here. I thought we could avoid some duplications.

Mr. Bradley: Mr. Chairman, in my view it would be advantageous to have the minister before us when the people who have a specific interest in the bill are in the audience to listen carefully, first of all, to what the minister might have in an initial presentation, and to hear what members of the committee may have to say. To proceed at this particular time would not be of much advantage for many of the reasons that I mentioned. I know Mr. Kerrio has a great interest in this bill, and should be before the committee when it is being processed.

A matter which could be proceeded with today, Mr. Chairman, is the matter which was brought to your attention by Mr. Breithaupt, the important matter of the collapse of Co-operative Health Services. No doubt each member of this committee will want to examine very carefully the collapse of a quasi-financial institution in the purview of the Ministry of Consumer and Commercial Relations, which was dealing with a good deal of money. That should be our priority today, not this particular bill; although we appreciate the minister doing us the kindness to appear before us to see whether we would entertain his presentation today.

Mr. Chairman: Thank you, Mr. Bradley. We also have a representative here from the Ministry of the Solicitor General who was most interested in the fire marshals bill. There is considerable concern about its moving quickly. Mr. Renwick, in particular, has expressed his desire in that, although Mr. Breithaupt has suggested a different time frame. But there is some real concern in connection with that.

Mr. Breithaupt: I agree with Mr. Renwick's view that the amendments which are before us in the fire marshals bill are most important to get into place so the building code is not further delayed and compromised.

I would have hoped there might be the opportunity for all the themes of apartment and other high-rise building fires to be dealt with at another time, but I would certainly look forward to the committee getting that bill attended to so that we can have it completed before the session. I will make no comments on the bill at all, if that will help to get the thing attended to. It is most important that we pass that bill promptly.

Mr. Piché: We are going home on Friday.

Mr. Bradley: Friday at the end of July.

Mr. Piché: We are ready to go home on Friday.

Mr. Chairman: The thrust of the fire marshals bill is that it is enabling legislation to open the door for other matters. Perhaps Mr. Breagh is more concerned about delegations and dealing with events and situations, rather than enabling legislation. Would that be a fair comment?

Mr. Breagh: I do not think so, no.

Mr. Elston: Mr. Chairman, Mr. Williams' remarks indicated that certain groups were to be asked, gratuitously, to attend. The minister has kindly confirmed that there was a definite commitment to have certain groups appear before us. Among those, I think, were certain members of municipal associations, who were singled out as probably having some input in respect of the bill the minister is attending on here today.

As Mr. Bradley pointed out, it would probably serve us well if those groups could listen to the minister's introductory remarks before speaking to us on those segments of the bill they wished to speak to.

Mr. MacQuarrie: Mr. Chairman, there are two items, really, which I want to raise. First, might it not be possible to proceed with a general review of Mr. Norton's bill, and at the same time, allow in the next two days for representations from the interested groups? I am sure that the minister will be present.

I do not see any need for duplication. I thought we might take full advantage of the time available to us, in view of the time pressures that have been imposed on the committee by the House. There is no reason that we cannot proceed and hear the minister this morning. The interested groups could be notified that the hearings will be resumed tomorrow and Friday, and that their representations can be made at that time.

Secondly, I want to raise the matter of the amendments to the Fire Marshals Act. This legislation is important. The ministry would like to have a fire code in place in early fall. I had some preliminary discussions with Mr. Breagh about who might be interested in making presentations. The ministry has some amendments it would like to bring in, at the committee stage, to strengthen further the amendments which have thus far come forward.

How can we notify those interested groups? Mr. Breaugh mentioned the Association of Municipalities of Ontario. He also referred to some of the larger municipalities as well as others who might be interested in making presentations. How can we notify them in order to expedite that bill as well?

Mr. Chairman: Mr. MacQuarrie, the clerk would contact the persons or organizations immediately, the names of which came out of the committee, the same as we did on the consolidations bill. That is the procedure by which they would be informed or advised.

12:10 p.m.

Mr. Williams: It seems to me we have several options available to us in order to try to make the best use of the time available to us, not only today, but through next week and most certainly before the report next Tuesday on Bill 89.

To my knowledge, there are only two items of business before the committee. They are the two bills that have been referred to the committee, the Fire Marshals Amendment Act and Bill 89. Because of very tight time constraints that have been imposed upon us with regard to Bill 89, I presume that is going to pre-empt the Fire Marshals Amendment Act in the order of dealing with the bills.

On the other hand, I understand from what you have said that there are people here from the Attorney General's department as well who could be available if we decide to proceed with the Fire Marshals Amendment Act this morning instead of Bill 89.

Mr. Chairman: No, the Solicitor General (Mr. McMurtry) is not available, but his representatives are in the audience trying to find out when something may happen in order to get some idea of procedures.

Mr. Williams: Then that probably narrows the options down to whether or not it would be appropriate to proceed with Bill 89, allowing for the fact that the minister is here and is able to proceed. I was taken by the comments made earlier by Mr. Charlton that the areas of concern had been identified in the debate last night, or what were felt to be areas of concern by some of the interested groups.

As I suggested earlier, those particular sections, if we got to them today, could certainly be stood down until these interested parties were before the committee on Thursday. In any event, if there were other sections that we might have dealt with that clearly were of concern to them, I am sure the committee would unanimously agree to reopen those sections for further consideration.

We would not necessarily be duplicating the effort and it would give us an opportunity, if we proceeded forthwith with the benefit of the minister here, to gain time that is needed to give this bill a full airing, allowing for the short period of time that it will be before the committee.

On that basis, I think, as suggested by Mr. MacQuarrie, that would not be inappropriate nor would it in any way inhibit or detract from representations being made by the public on the next hearing day, if the minister should proceed. If there are sections that we had not realized were ones of concern to them, as I say, I think the committee would be flexible enough to permit those people to address those sections should we have dealt with them by today. I think it would not be untoward to proceed, with the minister now present, and to get on with the further business as directed by the House.

Mr. Gillies: Mr. Chairman, I just wanted to echo what Mr. Williams said. We have direction from the House that Mr. Norton's bill has to be back to the House on Tuesday. There are any number of precedents for this, and I certainly share Mr. Breithaupt's concern that people who have concerns with this bill be heard.

Surely we could at least proceed with the minister's opening statement today, more as a matter of courtesy than anything, in that he and his staff are here now. I am sure the minister has had to adjust his schedule to be here.

I wonder if we could continue with the opening statement. The groups or individuals that wish to appear could certainly do so tomorrow and be provided with a copy of the minister's opening statement and any other material that they require to direct their concerns at specific parts of the bill. It happens all the time that a piece of legislation would be debated in committee and that groups come and go. I do not think it is necessary for them to be here for the minister's opening statement.

Mr. Breaugh: I just want to register an odd man out opinion on this. I do not understand how we got in this mess. Did no one know that the bill was going to be talked about last night? Is it reasonable to assume that any groups or organizations or individuals out there can be contacted this afternoon and get in here tomorrow morning? I do not think so.

In both of the bills that we have discussed at some length already this morning, it strikes me that the purpose of sending it outside the House is to allow other groups to attend at the committee and offer an opinion which the members should consider. The critics are not all here this morning. Some are, some are not. Could we not get our act together?

In the Fire Marshals Amendment Act, we did not even know whether it was going inside or outside for second reading. I do not understand how we got quite this mixed up so early in the process. It seems to me there are a lot of people around here who could render us some assistance by simply getting their act together.

I have been contacted by about six people on the Fire Marshals Amendment Act. I told them all the same thing and more keep coming out of the woodwork about what we should do with that bill. The purpose of putting it out to committee is simply to give some notice and opportunity to groups that might have an interest

in the piece of legislation, that we are now going to deal with that bill. If you want to say something about it, you have a chance to get in here and do it.

I am not concerned that the Fire Marshals Amendment Act might get through by the end of next week. I supported it in the House and I will support it in committee. But I am aware that that has been a matter of great concern to a number of other large organizations over a lengthy period of time. They should at least have the opportunity to come before the committee and state any concerns they have. If they say, "We are happy," then you can proceed with it in one afternoon probably. I suspect the same thing is true with the other bill before the committee.

But the opportunity should be presented to them in a reasonable period of time, since in the bill that Mr. Norton has before us, a number of those groups are not professional organizations. They are people who have an interest in a particular part of that bill and would require a little more notice than overnight to get a brief together and come before the committee. Many of them will have to take some time off work. They will have to write a brief and they do not always have professional staff to do that.

Some may be able to appear. I can think of a couple of the groups that have been mentioned in connection with Mr. Norton's bill that have staff, are here in Toronto and might be able to come before the committee as early as tomorrow. Now, could a little common sense prevail?

Mr. Charlton: There have been several matters raised that I think make it a little inappropriate to proceed with Bill 89 today. The basic purpose of bringing this bill out to committee was to have some dialogue with groups that have been involved in the hearing process under the acts covered by this bill.

It seems appropriate that if we are going to have dialogue, if we are going to discuss the ramifications of the sections of this bill, then first of all it is important that whichever groups are interested in being here can be here and can listen to the minister's responses to a number of the questions that have been raised.

It has also been made clear to the committee by the comments made here this morning that a large number of the members of this committee were not present or involved in the debate last night and are not even aware of the concerns that were raised. It might be useful if those members had the opportunity to look at Hansard so that they are at least aware of what this process is about and why it is happening.

I think, as well, that as Mr. Breithaupt mentioned, there are several other members of this Legislature who were involved in the debate last night. The Environment critic for the Liberal caucus and Mr. Renwick are two that I specifically know. There may be others who, because of other obligations this morning, are not able to be here. It seems more appropriate to me that with the tight time frame we have, we attempt to contact the organizations that have been mentioned today and inform them that we will be

dealing with this bill contact the organizations mentioned today and inform them that we will be dealing with Bill 89 tomorrow afternoon, Friday morning and again on Monday if necessary. That will make for a much more useful process in terms of what we are trying to accomplish.

12:20 p.m.

Mr. Williams: Was the committee expected to sit on Monday, if necessary?

Mr. Chairman: No. The House could make that available.

For those of you who were not in the House last night, I will read the Order Paper. "It is ordered that, notwithstanding any standing order of the House, Bill 89, An Act to provide for the Consolidation of Hearings under certain Acts of the Legislature, be referred to the standing committee on administration of justice and be reported back to the House by the committee by next Tuesday, June 23, 1981."

I presume the committee will assume that the word by should have said, on or before. Is Tuesday included in that? Is the committee agreed?

Mr. Breithaupt: I think so, Mr. Chairman. I would presume that the House leaders acknowledge, in sending the bill to us, that if the committee required extra time and asked for it--to sit Monday afternoon or evening or whatever--that that would be accommodated.

I do not think it is going to be necessary, but I do not know, of course.

Mr. Chairman: Mr. Mitchell?

Mr. Mitchell: Mr. Chairman, I do not disagree with some of the comments made by Mr. Charlton, Mr. Breaugh and others. As well, I think a couple of good points have been raised by the members of our caucus on this committee.

I see certain advantages if the minister were able to go ahead today, at least with his opening statement, because if that opening statement were introduced to this committee, it could be made available to those very groups you are talking about in advance of their coming tomorrow afternoon. They may be more able to prepare the type of comment that we are perhaps expecting from them.

Mr. Breithaupt: You do not get committee Hansard for several days.

Mr. Mitchell: If the minister were allowed to make his opening statement, I suggest that it be duplicated immediately and made available to those groups invited. They should be informed if there is an opening statement and perhaps that might even foster some questions--

Mr. Breithaupt: The minister does not have an opening statement.

Interjections.

Mr. Chairman: Mr. Minister?

Hon. Mr. Norton: I do not have a formal opening statement. I certainly am prepared to make opening remarks to the committee. It might be helpful, in terms of opening statements, to have something that is already recorded in Hansard--my statement in the House at the time of the introduction of this bill, which deals in very general terms with the contents. That is available and I presume that the interested parties already have copies of the bill.

Mr. Breaugh: It is ironic. You finally got your majority, Keith, and you do not know what to do with it.

Hon. Mr. Norton: It is not that I do not know what to do, with great respect.

Mr. Chairman: Thank you.

Those were all the persons who wished to speak to this.

Where do we go from here? We have two motions and we have the bill.

According to Mr. Williams, quite properly, we do not have the minister in front of us to deal with the Fire Marshals Amendment Act today. So we have the two motions and this bill. What do we do?

Mr. Charlton is the last speaker. Okay?

Mr. Charlton: No, I was going to make a motion, that--

Mr. Chairman: Excuse me. Mr. Williams advises that he had a motion on the floor. What was it?

Mr. Williams: I had moved earlier that we proceed with Bill 89. I said that--

Mr. Chairman: I am sorry. I missed that being a motion.

Since we have a motion on the floor, I cannot entertain a second motion.

Interjections.

Mr. Chairman: Mr. Charlton, is your motion an amendment to the existing motion of Mr. Williams?

Mr. Charlton: Mr. Williams motion was to proceed now with Bill 89?

Mr. Chairman: Perhaps the clerk can read it back to us.

Clerk of the Committee: It is to proceed to discuss Bill 89 now.

Mr. Piché: Which is in line with the purposes of this committee.

Interjections.

Mr. Charlton: The chairman will have to rule whether an amendment would be in order to change the time frame suggested in the motion.

Mr. Chairman: Any amendment is in order if it deals with the motion.

Mr. Charlton moves an amendment to the motion, that the committee proceed to deal with Bill 89 on Thursday afternoon and Friday morning, and that, if it becomes necessary, we request permission to continue that process on Monday.

Mr. Bradley: It is a very reasonable motion.

Mr. Chairman: I believe that Mr. Williams' motion to proceed means to proceed immediately. I would have assumed--

Mr. Williams: The motion said, "proceed now." I think that is a legitimate amendment to it. It is setting a different time frame, so it is not contrary.

Mr. Chairman: That is correct, it is an expansion of that, so I would rule that amendment is in order.

So where are we now? Question on the amendment?

Motion negatived.

Mr. Chairman: Now we will vote on the original motion.

Motion agreed to.

Mr. Charlton: Mr. Chairman, on a point of information: Now we have decided to proceed with Bill 89, and since the minister apparently has no opening statement and the members who were interested in discussing this bill are not present, with the exception of myself, it might be appropriate to ask how many of the members of the committee even have a copy of the bill with them, and perhaps we could send out for some of that information.

Mr. Williams: I do not think the minister said he had no opening statement. He had no written statement to submit to the committee but he was indeed well prepared to make some opening remarks in an informal fashion.

Mr. Chairman: Perhaps the minister can proceed with his opening statement, whether it be a prepared one or simply his repeat the statement he gave in the House as a preamble to the bill.

Mr. Breithaupt: Before we do this, Mr. Chairman, we have some interest in advising Mr. Hampson, representing the Solicitor General, as to what our procedure with Bill 59, the Fire Marshals Amendment Act, is likely to be. I do not like to see people just

sitting, waiting for days, in case something may or may not turn up. Is there any way we can help get that under way?

Mr. Chairman: The problem seems to be, Mr. Breithaupt, that Mr. Renwick and Mr. Breaugh apparently have differing views on that; and we have three groups of people who wish to speak to that or who Mr. Breaugh wishes the clerk to contact with regard to the Fire Marshals Amendment Act.

Mr. MacQuarrie: With respect to that act, it was indicated that the clerk could contact interested parties whose identity was known to members of the committee and who had made representations to them, and there was no objection on the part of Mr. Breaugh, if they were notified, to proceeding on Wednesday, which seemed to be the first opportunity.

Mr. Breithaupt: That is just fine with me.

Mr. Chairman: That is the consensus?

Mr. MacQuarrie: Is that the clerk's understanding?

Clerk of the Committee: Yes.

Mr. MacQuarrie: It starts immediately, Wednesday, now.

Mr. Chairman: What would happen if the bill we are on now were to wrap up on Friday, for example?

12:30 p.m.

Mr. Breithaupt: We would otherwise not then be requesting additional time to sit on Monday, we would just sit in our ordinary pattern. We might even get to the two motions I have put before you at some point, you never know.

Mr. MacQuarrie: Could I make that a motion, Mr. Chairman, so the staff of the ministry would be aware of it?

Mr. Chairman: No, I suggest that would be putting the committee in a straitjacket when we have a consensus. Because if you state that it is going to come on Wednesday and we are in the midst of something else, that would create a lot more confusion than we already have. I think there is a consensus that we are looking at Wednesday for the Solicitor General's Bill 59.

Hon. Mr. Norton: Mr. Chairman and members of the committee, perhaps I will approach my opening remarks with the assumption that, by virtue of my ministry being in the Resources Development policy field and this matter being referred to the administration of justice committee, some of the members might be perhaps less familiar with it than the members of the standing committee on resources development.

Mr. Breithaupt: Some members may have read Hansard last night, as I am sure the chairman did early this morning.

Hon. Mr. Norton: The chairman, I believe, was present in the House last night.

Mr. Breithaupt: I was there too, but not for the first remarks.

Hon. Mr. Norton: First of all, just to give a very general background to the bill, and perhaps to deal with the principles that are embodied in it, might be of some help. The purpose of the legislation is to deal with situations where a project which is being proposed might require hearings under several different pieces of provincial legislation.

The specific acts of the Legislature which are included are listed in a schedule at the end of the bill and they include the Environmental Assessment Act, the Environmental Protection Act, the Expropriations Act, the Municipal Act, the Municipality of Metropolitan Toronto Act, the Niagara Escarpment Planning and Development Act, the Ontario Municipal Board Act, the Ontario Water Resources Act, the Parkway Belt Planning and Development Act, the Planning Act, the Regional Municipality of Ottawa-Carleton Act and the Regional Municipality of York Act.

The concern which had been expressed, among others, by municipalities when they were to be brought in under the provisions of the Environmental Assessment Act was about a multiplicity of hearings; that a project, for example, might initially require a hearing before the Ontario Municipal Board which could take a lengthy period of time especially in terms of a complex or controversial proposal. The same project might require as well a hearing under the Environmental Protection Act and perhaps some combination of the other acts listed in the schedule.

In order to avoid the necessity for a multiplicity of hearings, and also, I think realistically, in order to minimize the cost in terms of energy and resources, both to proponents and to those persons who wish to intervene and be parties before a hearing, there was some value in looking at a streamlining of the approach and provide for a consolidated hearing, a hearing in which the requirements of all of the acts could be considered in one continuous hearing as opposed to sequential hearings.

The way in which it was decided to approach the development of that capacity was to establish what is called a consolidated hearings board. It was not thought desirable to establish an entirely new board with an entirely new administration, but rather to recognize that probably there are two principal boards which are most likely to be involved most frequently, namely, the Ontario Municipal Board and the Environmental Assessment Board, and to establish a provision whereby the chairmen of each of those two boards could, upon application, establish a consolidated hearing board composed of members of both or one of the Ontario Municipal Board and the Environmental Assessment Board.

The reason I say "both or one of" is that there may well be hearings taking place which would not involve the Environmental Assessment Act but could involve the Planning Act and one of the other acts listed. There would not be much point in having a member of the Environmental Assessment Board on the consolidated board in those circumstances.

In any event, the composition of the panel that will hold

the hearings would be determined, jointly, by the chairman of the Ontario Municipal Board and the chairman of the Environmental Assessment Board.

Once the panel is struck, it would have the authority to hold hearings and to make decisions under each of the relevant pieces of legislation. It would have the same authority as would the hearing panel holding individual hearings, except that it would render one decision. In other words, if there were three pieces of legislation, it would not issue a separate decision under each act. Rather, it would make one combined decision.

That outlines the purpose of the legislation. I would indicate that it is something the municipalities are keenly interested in seeing in place, as well as crown agencies like Ontario Hydro, who are especially interested because they are moving into consideration of the hydro lines from the Bruce generating station in western Ontario.

It might be of some help to the committee, and I will take your advice on this, if I touched upon some of the specific concerns that were raised in the course of the discussion last night. These will be things the committee will want to consider further and to hear representation on from delegations. Two or three concerns were raised last night which I consider to be legitimate concerns, in the sense that I hope in the course of our discussions some of them may be redressed. I would describe them as concern that no undue power be vested in the hands of the tribunal and that fair and open access to the hearings be assured.

I do not intend to get into a clause by clause consideration. I will just try to touch upon the concerns expressed. Section 5(3) and 5(4) of the bill provides for the board to defer decision on certain parts of the project before it to a later date to be determined, in some instances, without a hearing. Some felt that might allow the board to avoid public hearings in the decision-making process.

12:40 p.m.

I want to explain why we felt it was necessary to include that. Some of the hearings and approvals which are combined under this legislation can deal with a mass of technical detail, very often technical detail which is noncontroversial. An example would be the installation of a municipal sewerage works. Matters relating to brand names of pieces of equipment, pipe dimensions, materials and so forth, could arise. These would not be controversial matters, but would ultimately have to be determined in the final approval of a project.

There could arise, of course, issues in which the public would clearly wish to be involved. However, it was thought that in instances of the nature first described, the time of the board and of the participants in the hearing could well be wasted if all minor technical matters had to be dealt with in a public hearing. Therefore, the provision was included so that, aside from the general consideration, specific technical matters, such as the sizing of a pipe, or the particular brand name of a piece of equipment, could be referred for determination without a hearing.

Further, if the matter before the board were a particularly complex project, it might well be that the final design would not be completed until there was some approval in principle. The preparation of final design and engineering can be a very costly matter for a proponent, and it was felt that if they were required to complete all of that before they went into hearing, they would be much more inflexible in their approach before the hearing than if the final details were left still to be worked out.

One of the purposes of the hearings is to provide for flexibility in terms of shaping the final details of a project flowing from the information that is considered at the hearing. Therefore, there will undoubtedly again be some detailed technical matters which, in the discretion of the board, perhaps upon hearing the people address the matter before them, may not require a public hearing and could be deferred for determination in some other way. Perhaps it could be delegated to a technical person within a ministry for final approval of a specific technical detail. Where matters of controversy are deferred by the board, the board would, clearly, be expected to provide for a hearing on the matter.

I understand the concern that was expressed. There may be some suggestions for improving the wording without limiting the necessary flexibility. I am open to hearing suggestions on that. But it is important that we not lock ourselves, or the board, into a situation where every minor technical detail has to be the subject of a public hearing. I ask you to use caution on that point.

Section 7, I believe, was another area where some concern was raised. Section 7(1) makes it clear that the board must comply with all of the preliminary procedures, unless the joint board rules to the contrary under subsection 2, in order to facilitate the hearing. Clearly the intention is not to be--and in fact is expressly said, "and is not unfair to any person entitled to be heard or to attend the joint board hearing."

It is our intent that the government propose regulations under the appropriate section of the legislation requiring that where the Environmental Assessment Act applies, the preliminary proceedings under the Act be completed before the joint board starts to hear its evidence.

In other words, the preliminary proceedings would include the submission of an environmental assessment--the preparation and circulation of a government review of that assessment and receipt of submissions from any interested parties on the review. I think, therefore, it is unlikely that a joint board would be able to unfairly abridge the rights of any person, or any rights they have under any other statute. That again is something to which, during the course of the next couple of days, members and some of the groups may wish to address themselves.

Section 5(6) says that: "A joint board may make any decision mentioned in subsection 2 without holding a hearing if the joint board is satisfied that in the circumstances a hearing would not be required or would be dispensed with under the act specified in

the schedule or prescribed by the regulations, that, but for this act, would apply in respect to the undertaking."

Some concern again was expressed, as I recall, about that provision. It clearly is not intended that the board sit and decide that it is going to dispense with public hearings. What it is intended to provide for is the fact that in some instances the consolidated hearing tribunal would have to be struck before it is known whether the requirement would be for a hearing under a given piece of legislation.

For example, the Environmental Assessment Act. If there was an assessment made of the project submitted to the ministry and the ministry reviewed the assessment, depending upon the timing of the striking of the joint board, there would normally not be a hearing required unless someone from the public, during the 30-day period following the circulation of the ministry's review, requested such a hearing.

If there is no objection, then the minister still has discretion to direct a hearing. If neither of those things occurred, then normally there would not be any need for a hearing under the Environmental Assessment Act.

However, if this provision is not included in the bill, once you strike the joint board, the board may not have the jurisdiction to do anything but hold all of the hearings that might be held under all of the pieces of legislation. I do not think it is intended that if people are not requesting a hearing, the board should still, because of this legislation, be required to proceed and hold a public hearing under the Environmental Assessment Act.

They might still do it under the Planning Act in another piece of legislation, but the substance of the matters they would consider would be quite different. Another example of that is that in a number of instances, Ontario Municipal Board hearings might not be required.

For example, there are many times when the Ontario Municipal Board, in financial or even in zoning matters, would not be required to hold a hearing unless requested to do so by a member of the public. If there were no objections during the appropriate period to receive objections, I do not think it would be the committee's intention to hold a hearing under the Planning Act.

If the mechanism for the joint board was set in place in advance of that final determination, then in the absence of such a provision they would not be able to say, "Well, we will dispense with a hearing under the Planning Act because no one has requested such a hearing," or, "We will dispense with the hearing under the Environmental Assessment Act because no one has requested such a hearing," and then proceed to hold the hearings under the pieces of legislation that would still apply.

12:50 p.m.

If you read the section carefully, where it says, "the board is satisfied that in the circumstances a hearing would not be

required," that is what is being addressed there. If the board proceeds otherwise, it seems to me that it could be dealt with by the courts promptly, if it was trying to avoid holding hearings that ought to be held.

Section 8 was another one in which concern was expressed, particularly, as I recall, with regard to the last two subsections. Perhaps I could deal with the last one first.

It says, "A joint board may specify additional persons who shall be parties to proceedings before the board." That together with subsection 3 may have led some of the persons involved in the debate last night to feel there might be a possibility of the board cutting people out from having status before the board. The whole thing has to be read, taking into consideration subsection 1.

"A person entitled to be heard at a hearing or to take part in proceedings before a tribunal that has a power, right or duty to hold a hearing in respect of which a joint board has been established has the same entitlement in respect of the proceedings before the joint board." In other words, that is the important part to bear in mind initially. Any rights that they may have under the individual pieces of legislation, they would have in this instance.

When you get to subsection 3, it is taken almost verbatim. I think the only change from the Environment Assessment Act is the use of the word board to joint board. It was included originally in the Environmental Assessment Act at the request of environmental groups that were making submissions in hearings similar to this at the time that legislation was initially under consideration.

This was to ensure the benefit of class representation. The last part suggests, "any other member of the class for which such appointment was made may, with the consent of the board, take part in the proceedings, notwithstanding the appointment." That part was included to ensure that the statute did not cut off the rights of individual members of the class. As I say, that is precisely the wording, as I understand it, of the existing provision in the Environmental Assessment Act.

Subsection 4 is, I think, new. One of the things we were considering there in terms of the joint board being able to "specify additional persons who shall be parties" was to allow for, in some instances, groups with a general interest in the area but not specific entitlement under some of the pieces of legislation. They may not, for example, be rate payers, or they may be an environmental group from wherever.

More and more we would like to bear in mind the possibility, especially in view of the initiatives that we have been taking in the United States recently-- In fact, staff from the ministry under the leadership of the deputy will be in Washington this Friday evening for a three-hour presentation before the Environmental Protection Agency. There will be other similar situations developing in the very near future.

In all fairness, we have to recognize that there may be circumstances under which a hearing is being held within Ontario, when environmental concerns are under consideration, where our neighbouring jurisdictions, whether it be a neighbouring province or a neighbouring state in the United States, has a legitimate interest in terms of environmental impact on a transboundary basis and may wish to have status before the hearing. If the board did not have the authority to specify additional persons, they would presumably have no authority for recognizing a representation from the state of New York, for example.

Mr. Kerrio: That is only fair reciprocation. They invite us over there.

Hon. Mr. Norton: Sure, and I think that we do not want our legislation to preclude the board from doing that.

I hope we can see these things in total context over the next couple of days. Maybe some of the concerns that were expressed will at least be minimized.

Mr. Chairman, that touches on the principal concerns that I recall from last night. There may be others, of course, that come up in the next day and a half or so, in which case we will deal with them as the committee sees fit on a clause-by-clause basis.

Mr. Chairman: Any other comments?

Mr. Breithaupt: Only to say I think, as I look through the bill now with the comments that have been made from a variety of sources, there probably will be amendments discussed in virtually every section.

The application of the two particular statutes--both the Environmental Assessment Act and the Ontario Municipal Board Act circumstances--have, of course, been time consuming, as the minister has said. They also have been very expensive. Indeed, we are going to get a circumstance now where things will be cheaper by the dozen if we have these 12 statutes attended to. Possibly we may even include the Pits and Quarries Control Act, 1971, which would give us a baker's dozen which, I suppose, for the extra item of legislation might also give some saving in time. But that is the kind of thing that can likely be discussed in the clause-by-clause discussion.

The various groups that are involved I hope will be able to have sufficient notice. Of course, those groups that are particularly interested may well have made some comments to the minister and have some preparation. We will be able to proceed tomorrow with those who can attend. I hope that positive legislation will result, even though obviously the time of notifying people is very short.

Mr. Chairman: Just before someone happens to notice the clock is approaching one, Mr. Charlton wishes to speak. Might I also get some clarification for myself: I would say at this point it appears fairly logical to assume that we are going to have to ask the House for permission to meet on Monday. I think that would be a fair guess at this point.

Mr. Breithaupt: I think it is reasonable to ask for permission to meet. Indeed, the House may be meeting Monday evening. I do not know that, but if we could ask to meet on Monday afternoon and Monday evening, that might well resolve the matter.

Mr. Chairman: Mr. Breithaupt moves that we ask for permission to sit on Monday.

May I have the question?

Mr. Williams: But, Mr. Chairman--

Mr. Chairman: Mr. Williams, in fairness, that is no more than interspersal. I did not even get to the end of my sentence. Before we get into any discussion or get off on a further tangent, may I ask how long do we attribute to various groups, how long do we allow for a clause-by-clause study, and how long do we allow for our report, in view of the fact that we must have it in on Tuesday? What is our logical breakdown?

Hon. Mr. Norton: I do not wish to in any way limit the committee's consideration of this. I would just say, for the benefit of those who may not have been party to the discussion, the initial request in effect was that the matter be referred to the committee. At that time, I said I would certainly consent to that, provided there was a limitation of two days' consideration so it could get back into the House.

1 p.m.

As a result of a meeting of the House leaders, that came back to the House in the form of a specified date for return. The original agreement, which is not official in the sense that in the order it does not refer specifically to two days--if it is necessary to go beyond that, I would certainly not be averse to that, although I hope the additional day is not necessary, simply because of other pressures on my time. I would respectfully request that the committee not go necessarily into another full day on Monday, unless it is necessary.

Mr. Breithaupt: I could not agree with you more.

Mr. Williams: I know Mr. Charlton was on; I just want to make one quick comment on this. Were you going to speak to that motion?

Mr. Chairman: Mr. Charlton asked to speak quite a long time ago. So, would you go ahead--Mr. Williams?

Mr. Williams: Simply on the motion, I am just suggesting that perhaps it would be better to consider this tomorrow after we see what progress we make on the hearings. Let us not presume that we are going to need extra work hours to deal with this. It is premature to make that judgement call.

Mr. Chairman: Perhaps, but in view of our recent past history I have found that some attempt to get some structure to things is never premature. That was perhaps my aim, but I will leave it until tomorrow then.

Will you withdraw the motion at this point then, Mr. Breithaupt?

Mr. Breithaupt: Yes, it can be granted Monday afternoon for Monday afternoon, if we need it. So it is not a matter that has to be moved today. It is fine with me.

Mr. Charlton: If I could just make a couple of very brief comments, Mr. Chairman. I realize the time.

It has become quite clear, as a result of the debate last night, the minister's wrapup last night and his comments this morning, that the opposition parties in principle supported what the minister was attempting to do through this piece of legislation. It has come down to, at this point, being very clear as well that the concerns are not with the intent the minister has expressed but perhaps with the wording of the sections that we have been dealing with, and perhaps some other sections as well.

It might be useful if the committee were to make available to itself some legal counsel, either through the Ministry of the Environment or from the Attorney General's ministry, in order to deal with some of the concerns and fears about the way in which sections are worded.

I also raised the matter last night--and perhaps at some point during the course of our deliberations the minister can make this one clear. It is something that is not specifically dealt with in the bill, or if it is it is not clear to me. That is the matter of the way in which consolidated hearings will proceed and which rules under which act would apply.

I raise the question if you were combining two acts and one was more restricted in its scope than the other, should there be a laid-out procedure as to what the rules of the hearing will be? That is a concern I would like to see addressed as well.

Hon. Mr. Norton: I can assure you, Mr. Chairman, that I will have legal counsel from the ministry present at all times before the committee. In fact, we have legal counsel here this morning.

Mr. Williams: I move adjournment, Mr. Chairman.

Mr. Chairman: Thank you. Mr. Williams has moved adjournment. We will recommence tomorrow following routine proceedings.

The committee adjourned at 1:04 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CONSOLIDATED HEARINGS ACT

THURSDAY, JUNE 18, 1981



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Bradley, J. J. (St. Catharines L)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Piché, R. L. (Cochrane North PC)
Renwick, J. A. (Riverdale NDP)
Swart, M. L. (Welland-Thorold NDP)

Substitution:

Kerrio, V. G. (Niagara Falls L) for Mr. Bradley

Also taking part:

Charlton, B. A. (Hamilton Mountain NDP)

Clerk: Forsyth, S.

From the Ministry of Environment:

Jackson, M. B., Solicitor, Legal Services Branch
Norton, Hon. K. C., Minister

Witnesses:

From the Coalition on the Niagara Escarpment:

Macmillan, L., President
Poch, H., Barrister and Solicitor

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, June 18, 1981

The committee met at 4 p.m. in room No. 151.

CONSOLIDATED HEARINGS ACT
(continued)

Resuming consideration of Bill 89, An Act to provide for the Consolidation of Hearings under certain Acts of the Legislature.

Mr. Chairman: Gentlemen, shall we start? We have a quorum present.

Mr. Breithaupt: Mr. Chairman, Mr. Kerrio is substituting for Mr. Bradley and he will give you a note to that effect since he is the critic.

Mr. Chairman: If you would put it in writing please, Mr. Breithaupt, according to the standing orders.

Mr. Renwick: Mr. Chairman, I think I am one of the people who is responsible for this bill in the committee. On two areas that were of significant concern to me, I asked the legislative library research, on very short notice, if they could provide me with information in connection with it and they very kindly did.

I have taken the liberty of requesting copies of it for each member of the committee, for the minister and those associated with him. I hope it will be of assistance in speeding up and proceeding with the areas that are of concern, the first being the persons entitled to be heard--a question of standing--and the second being the strange provisions which indicate that the joint board can decide to proceed, in certain circumstances, without a hearing. Those were the major points which were of basic concern to me.

I appreciate that, with the co-operation of the government and the House leaders, the bill is here for those purposes. As soon as I get this material, I will see that each member of the committee has it, as well as the minister and his advisers.

Mr. Chairman: Thank you. Today, we have two presentations, if I may use that expression. There are two persons who wish to make representations to the committee. There is one person scheduled for tomorrow. I am advising the committee to ensure that we have time.

Mr. Mitchell: Would you identify them, please?

Mr. Chairman: Yes. Lyn Macmillan and Harry Poch are the two today. The first is the president of the Coalition on the Niagara Escarpment and the second one is a barrister and solicitor.

As a new chairman, and being under time constraints in the orders from the House, I would like a little guidance on how we will deal with these witnesses, and if the witnesses are finished today, whether we will start into clause-by-clause consideration before hearing the third witness tomorrow. What are your suggestions?

Mr. Breithaupt: Mr. Chairman, I would think if they have some lengthy general remarks, it might be well to hear them both because they can point out various sections which are worthy of consideration, in their opinion. It might then, I think, be preferable to hear the third person before we go into clause by clause.

If the remarks, on the other hand, are brief, we might have to begin a clause-by-clause study, with the general understanding that if a certain point is raised, we could always go back to a particular clause and deal with the matter to get the best balance we can.

Mr. Chairman: Fine. Thank you.

Mr. Mitchell: Mr. Chairman, I do not disagree with Mr. Breithaupt, recognizing the time constraints. The people, however, were invited and it may be more appropriate to hear from them at the beginning, so that the minister has the--

Mr. Kerrio: I think we are agreed on that.

Mr. Chairman: Fine.

Mr. Mitchell: Just so long as the time constraints, which all parties agreed to in the House, are observed.

Mr. Breithaupt: We have no control over that.

Mr. Chairman: The first witness is Ms. Macmillan. Would you please be seated and begin.

Ms. Macmillan: Mr. Chairman, gentlemen. My name is Lyn Macmillan and I am the president of the Coalition on the Niagara Escarpment, CONE. The Coalition on the Niagara Escarpment is a nonprofit, incorporated organization consisting of nine conservation and environmental groups, plus concerned individuals, who are dedicated to the long-term protection and intelligent planning and use of the Niagara Escarpment.

The groups are as follows: the Federation of Ontario Naturalists; the National and Provincial Parks Association of Canada; Canadian Environmental Law Association; Pollution Probe; the Sierra Club of Ontario; the Canadian Nature Federation; Foundation of Aggregate Studies; the Soil Conservation Society of America, Ontario Chapter; and the Federation of Hiking Trails of Ontario Associations.

CONE's charter, which is very brief, strives for increased public appreciation of the natural features and scenic values of the Niagara Escarpment, support for the protection of the

escarpment, as embodied in the objectives of Bill 129, the Niagara Escarpment Planning and Development Act, implementation of programs that will result in effectively meeting these objectives and a fair and equitable treatment of land owners. That is all the background which will be necessary, unless you have some questions.

Mr. Kerrio: Excuse me, Lyn, before you start. Do you have a copy of the presentation?

Ms. Macmillan: No; I will explain why.

Mr. Kerrio: Even if you had only one, I was going to ask our clerk to make a copy of that.

Ms. Macmillan: I am very sorry, I have none. I do not know whether this is being recorded or--

Mr. Kerrio: It is, but it is usually very convenient to have a copy in advance.

Ms. Macmillan: I am sorry. I will explain.

Before commenting on Bill 89 I would like to make a few remarks about what I consider the shabby treatment of us, the public, which we have received at your hands. I was only informed of this meeting last night. I received copies of the bill and Mr. Keith Norton's remarks today, and have, in considerable haste, endeavoured to bring before you our concerns at this piece of legislation. That is why I have no printed document. I was working on this until about four minutes ago.

Many groups were not informed at all. The Conservation Council of Ontario, with a constituency of over one million people and 53 different groups, only heard about this meeting from me this morning. They are naturally affronted and outraged and have asked me to register their objections to you today.

I represent nine groups, only one of which has been contacted, the Canadian Environmental Law Association, whom I believe you will be hearing from tomorrow. Each of the other constituent members of the Coalition on the Niagara Escarpment would have liked, very much, an opportunity to prepare for this type of meeting.

Their interest is not a sudden whim. We are no fly-by-nights. The Federation of Ontario Naturalists, which represents 20,000 people in Ontario, has recently celebrated its fiftieth anniversary. We feel we are entitled to courtesy and to fair play. You cannot, no matter how much you wish, stifle demands for public participation, but you are doing a very great job of discouraging us.

Today you can easily say, "We invited the public to speak and they did not come," knowing quite well you have not given us fair warning. Or you can say, "They came, but they were so ill-prepared." One cannot win against such odds.

CONE is bitterly disappointed and affronted at such chauvinistic and arrogant behaviour on the part of the Ontario

government. I often think that these things, when they are done in haste, mean more haste, less speed.

Bill 89 is a very praiseworthy and interesting concept. I can see it has quite a few execution problems and problems with wording. It would have been a pleasure to have had the time to examine it in detail. We could have made a far more informed contribution. I apologize if my contribution is somewhat abbreviated.

However, I congratulate the concept. The 12 acts of the Legislature, which call for a multiplicity of hearings, are to be consolidated into one hearing. I hope the requirements of all the acts can be considered in one continuous hearing, as opposed to sequential hearings, thereby saving time, energy and money. But CONE does have very serious doubts about the lumping of the Niagara Escarpment Planning and Development Act into this package. I will refer to it later. O

One should have more time to check the pros and cons of including it because it well may be premature, considering that the hearings on the Niagara Escarpment plan are not completed and will probably not be completed until next year. Then, again, there is a long process to go through before cabinet finally accepts the plan and put it into legislation.

If I may now quickly go through what I consider to be points of execution more than concept. In section 1 of this act there is absolutely no mention of any minister. Who is the minister who will be overseeing this act? Is it to be the ministers of all of the acts that are involved, the Minister of the Environment or the Minister of Housing? That I can see as being a real hiatus and a real problem.

I would now like to go to section 5, with which we have a lot of problems. We are concerned about the capacity of this particular board to defer matters. There do not seem to be any standards or tests as to why this board would defer a matter that could be heard by another board. There are no guideposts. It is very vague and could indeed become arbitrary. Not even a minister makes decisions, and there is no appeal.

I have read Mr. Norton's remarks on section 5(3)(b) in particular and I understand that other people have been concerned about it too. Again, I think that this could be subject to potential abuse and that its arbitrariness and lack of standards and guidelines are to be condemned.

4:10 p.m.

One matter that was referred to was sections 5(3) and 5(4) of the bill, which provide for the board to defer decisions on certain parts of the project before it to a later date to be determined, in some instances without a hearing. Concern has been expressed about that, and some felt it might allow the board to sort of avoid public hearings in the decision-making process. I should say that is exactly what our concern would be.

Mr. Norton said, "I want to indicate at this stage why that was included." I find his reasons to be perhaps valid, but he could certainly clarify this section if that is all he is worried about, if he is worried about the technical details. Frankly, I found the technical details to be crucial in some of the hearings I have been at, particularly the one up in Maple. If it had not been for the technical details, the public would not have known what was going on, and we asked a great many questions.

When Mr. Norton says it is because all minor technical matters to be dealt with should not come before a hearing, I question this. I think that perhaps the key phrase here is "all minor technical." If the hearing officers at the hearing decide at their own discretion that some of these matters are minor and technical, surely they could stop the participants from inquiring or making legal cross-examination on these.

I do not think you can stop a hearing because you are worried about minor technical things. I think you say to the hearing officers, "Use your discretion and do not include these minor things, whether the size of the screw is 2.4 or the size of the pipe is one centimetre." Those perhaps are minor details, but I do not think you stop a whole hearing because you are afraid that minor details are going to bog it down. I feel that Mr. Norton's explanation of why he did that is subject to a great deal of criticism.

As to section 5(3)(b), as far as I can see, the joint board can defer things normally heard by another board under another act. Then in section 5(4)(b) the thing that they have deferred can be decided without a hearing. I think this is inconsistent with rights that exist very firmly under other statutes and it also is inconsistent with section 8(1). My interpretation is that hearings mandatory under another act, for example, part V of the Environmental Protection Act on waste disposal, can not only be deferred but no hearing need be held. I think a great deal of thought must go into these two sections so that it is clarified and we do not get left with what my interpretation is, namely, that no hearing need be made.

Section 7(2) says: "Upon application without notice, a joint board may change the requirements as to filing of documents or giving of notice in respect to any hearing in respect of which the joint board has been established if the joint board is satisfied that the change will facilitate the joint board hearing and is not unfair to any person entitled to be heard at or to attend the joint board hearing." Then section 7(3) says: "Subject to this act and the regulations, a joint board may determine its own practice and procedure."

Let us deal with section 7(2). I think the Environmental Assessment Act should take precedence. If you read section 5 of the Environmental Assessment Act it is very clear as to what the requirements are and what is needed before an application is made, and I think that should be included in this. I also think that in section 7(3) they should be bound by the Statutory Powers Procedure Act and that should be mentioned in the act.

Mr. Mitchell: I am sorry, may I interject? They should be bound by what?

Ms. Macmillan: The Statutory Powers Procedure Act. Again, reading Mr. Norton's comments, he made remarks such as "it is very unlikely that." That is too vague. It could be very likely that. That interpretation has to be made much more clear.

As I have said, I think section 8(1) is inconsistent with section 5(4)(b). Which provision of these two takes precedence and what appeal mechanism exists? Not only does this act conflict with other acts, I can see that in this case it conflicts with itself.

Section 8(3) says: "For the purpose of proceedings before a joint board, the joint board may appoint from among a class of parties to the proceedings having, in the opinion of the joint board, a common interest, a person to represent that class in the proceedings, but any other member of the class for which such appointment was made may, with the consent of the joint board, take part in the proceedings notwithstanding the appointment."

Frankly, from our experience, this is always used against citizens, not proponents. For instance, in the Maple pits the Environmental Appeal Board tried to make the town of Vaughan and the land owners join forces when the town of Vaughan was totally opposed to the land owners. We had a great struggle with that one, but they did not suggest combining the two proponents who were asking for the garbage dump on their land. In fact, they allowed two sets of lawyers for the proponents to ask two sets of cross-examination and it was extremely difficult to cope with that. As far as section 8(3) is concerned, I do not think that works. It usually does not work in the interest of the public.

Mr. Kerrio: Can I clarify something? Would you suggest maybe that those people should appoint their own if it was expedient to make a joint effort?

Ms. Macmillan: Yes, exactly. I do not think it should be up to the board to say, "All you guys join together and have one spokesman." Our interpretation of that was that there were different land owners with totally different concerns and they would have been impossible to join together, and yet we were almost forced to do so.

Mr. Kerrio: To make it more convenient, they should ask you to decide whom you wanted as your representative.

Ms. Macmillan: They did not, They told us that we had to be in with the town. I think that this does not always work, although it looks nice on paper. From my experience that is a horrible one.

Section 10 on expert assistance is okay in itself, but it does not address public funding. It says: "A joint board may appoint from time to time one or more persons having technical or special knowledge of any matter to inquire into and report to the joint board and to assist the joint board in any capacity in respect of any matter before it."

In spite of the fact that the public quite often do assist the board, bring in expert witnesses and are congratulated for the good performance, they are never given any public assistance. That, I think, is something that should be talked about now at this time when you are putting in a brand new act.

Public assistance and public funding are essential if you are going to get as informed a public interpretation and public participation as you probably wish. To me, it is a shame that that has been left out and I would like to see that addressed. Perhaps the ministry has been doing some work on this. I believe they have been doing some work on public funding and I think that should be included.

Section 19 says, "The Lieutenant Governor in Council may make regulations." Ought there not to be an opportunity to comment on these in the act? There does not seem to be any chance of commenting on this.

Who is going to be responsible for responding to public comments? Again, I point out that there is no minister in charge. It is done federally, for example, under the Clean Air Act. In Ontario, the Occupational Health and Safety Act, I believe, has these comments written into the act. I also think there ought to be a provision, if regulations are made, that they should be published in draft form in the Ontario Gazette at least 60 days ahead, with public comments accepted. Somebody ought to be looking at those.

4:20 p.m.

* I think those are all the remarks I have to make. As I said, I would have loved to have had more time to go into this more deeply. I just had a few hours. It is a very interesting act, but I think a lot of things have been left out.

Finally, there is something that concerns me more than anything, and I have not had time to discuss it with my board. Owing to the specific location of the Niagara Escarpment--and the Niagara Escarpment Planning and Development Act which applies to it is a very narrow, specific act--the Niagara Escarpment has tremendous attributes, as you know. A very special act of the government was put in just to look after this specific area in Ontario. It is the only part of Ontario that has a special act like this. It has a special policy and I think its concerns may best be addressed by that hearing body which becomes the authority in the end.

As I was saying, the public hearings are now in process. The plan has yet to be decided. Who is going to be the implementing body has not been decided. CONE has constantly reminded the government of this fact. It is no good having the best plan in the world, if you have no implementation. It is up in the air, the future of the implementation of this plan. We have advocated that an ongoing provincial body must administer the plan or the act would be lost and the whole process would go down the drain.

If the Niagara Escarpment Planning and Development Act is

going to be lumped in with this, it could well disappear. I think one should have more time to discuss this. I do not know whether the committee realizes that there is a long way down the road before this plan becomes law. I think we should be allowed to discuss it in our group. I think we should be allowed to discuss it with the Provincial Secretariat for Resources Development and the Niagara Escarpment Commission itself.

The recommendations of the hearing officer have yet to be made; I believe it will not be done before the end of 1981 or the middle of 1982. If you will refer to section 10 of the Niagara Escarpment Planning and Development Act you will see that there is an awful lot that needs to be done between the plan's final submission and the final decision by cabinet. There are two or three pages of steps.

So, we recommend that time be allocated to allow a closer look at whether the Niagara Escarpment Planning and Development Act should be included in this package in the light of the fact that no decision has been made on the plan and that no time has been allowed for CONE's constituent members to study the implications. To my knowledge no mention of these problems has been brought to your attention.

I suppose I could put this in the form of amendment but I do not feel that I am qualified; I have no legal training and I think that I might do the wrong thing. I am just asking you for your consideration on this very important point, which may not have been brought up.

Hon. Mr. Norton: I am sorry, Ms. Macmillan, but I missed your very last point.

Ms. Macmillan: I simply said I do not think I am prepared to make an amendment at this time. I was suggesting the kind of wording, but I would prefer a legal expert to do it.

Hon. Mr. Norton: I was not sure whether you were referring to a specific section or to the bill generally.

Ms. Macmillan: At the end of the act there are a list of acts that are included. I am concerned about number six, the Niagara Escarpment Planning and Development Act, because of the prematurity of its position at the moment in the light of its present hearing process.

Hon. Mr. Norton: That clarifies it. Thank you.

Mr. Renwick: Ms. Macmillan, I appreciate your coming before the committee on such short notice. I understand your reservations and concerns about the shortness of that notice.

I would appreciate your addressing your attention to a further subsection of section 5 that I do not believe you commented on. That is subsection 6, which states, "A joint board may make any decision mentioned in subsection 2"--that is, its whole decision-making power--"without holding a hearing if the joint board is satisfied that in the circumstances a hearing would

not be required or would be dispensed with under the act specified in the schedule or prescribed by the regulations that, but for this act, would apply in respect of the undertaking."

Ms. Macmillan: Again, it is vague, isn't it? To me it is, and I am not a lawyer. It may be very clear to you. It seems to me the board has great arbitrary powers. I may be wrong. That is why I really did not comment on subsection 6 because I did not understand that it was any clearer than the other two.

Mr. Renwick: I just want to express the concern I attempted to express in the House the other night. I had the sensation that the very fact of creating a joint board would mean that the hearing was of significant dimensions and therefore must be public. In other words, having gone through the process, I felt that there should be no power in the board under any circumstances not to have a public hearing. That was my view on that particular matter, and it remains of concern--similar to that strange clause about deferring and then not have a hearing.

Ms. Macmillan: I agree. I think it is extremely vague.

Mr. Renwick: Secondly, I have always been concerned, under these kinds of hearings, about who is entitled to be heard at the hearing. From the experience you have had with your coalition in the various matters, have you run up against a problem of getting standing? If so, what were the arguments that were made against your having standing?

Ms. Macmillan: No, I have never had that trouble from the point of view of the coalition. We have seldom gone in, but when we have gone in, it has usually been about a development control application.

An example is the Steed and Evans gravel pit in Fonthill. I am not within 500 feet; none of us is. But it is a provincial concern. The commission turned down this application, so the proponents, Steed and Evans, appealed it and it went before a hearing officer. I simply asked permission to appear and I never was turned down. That is the second time I have done it. I gave my reasons for coming and I quoted the acts and the policy of the government and said that I felt all our people were concerned because it was a provincial resource.

So, as long as it is a provincial circumstance and a provincial resource, we are okay. But if it is a specific thing, I doubt if we would be allowed to go in. I think the hearing officer was being very lenient. I do not know what the rules are, but certainly I have never come across anything that prevented CONE from going to a hearing if we presented our case in the proper way.

Mr. Renwick: Was the basis of your presentation that you had a property interest?

Ms. Macmillan: No, that was not the basis.

Mr. Renwick: What was the basis of your presentation?

Ms. Macmillan: That this was a provincial resource and that we were supporting the commission. The commission had turned it down on the basis that it violated the Niagara Escarpment Planning and Development Act; that it was not in conformity with the plan. We supported that as people whose charter, as I told you, strives to support the government's policy under the Niagara Escarpment Planning and Development Act. We simply said that this was an affront to the policy laid down by the government and we supported the commission. That was really most of our evidence.

4:30 p.m.

So, we did not have a property interest, but that is coming up later. The Federation of Ontario Naturalists, one of our groups, has quite a bit of property on the escarpment and they wish to appear at the hearings. We will support them and I do not think we will have any problem.

We have never been denied standing as long as we could prove that we were there in the provincial interest and supporting the act.

Mr. Renwick: In other words, you have not felt that you had to have either a pecuniary interest or a property interest in order to-- You have never run up against somebody saying to you, "To be here you must have a--

Ms. Macmillan: No. I have had criticism that I have no right to speak. I just do not pay any attention, if it is not the hearing officer. Everybody has a right to speak.

One thing, I think, will be a problem. In the phase two hearings you do have to have a specific property in mind when you support a certain designation. We have not got into that. We have just made general presentations and general comments. I am speaking about the development control process, which we have never had any problems with at all. But I am wondering if we won't have problems with that.

That is what I wanted to discover in the new act. I am not sure we would not be cut out of it if we did not live within 400 feet or whatever the Planning Act says.

Mr. Renwick: You may have heard at the opening that I had asked the legislative library research people to prepare an aide-mémoire to me on the matters that were of concern. I would be glad to let you have a copy of it for your own information.

Ms. Macmillan: Thank you very much indeed. I would be most grateful.

Mr. Renwick: It was prepared in great haste so it is not necessarily--

Ms. Macmillan: Like everything else, in great haste.

Hon. Mr. Norton: I think you have addressed some of the concerns that Ms. Macmillan raised. Do you wish the other members of the committee to go first?

Mr. Chairman: We will deal with the matters as they are brought up.

Hon. Mr. Norton: First of all, Ms. Macmillan, we all apologize for the short notice with respect to this proceeding. As you may be aware, the bill was originally introduced for first reading on June 1 in the Legislature. Only this week did it come up for second reading, at which time there was the option, following debate on second reading in the House, that either it be dealt with in the committee of the whole House or in standing committee. There was consent on all sides of the House that it would come here.

The time constraint, because of the time remaining in this session, was a problem we had to cope with. There are some fairly urgent matters awaiting the passing of this bill, not the least of which is the concern that has been expressed on the part of the municipalities, which agreed to come in under the provisions of the Environmental Assessment Act on the understanding that a bill such as this would be passed in order to avoid a multiplicity of hearings.

One of the first questions that you raised related to which minister has responsibility. As this act would apply to hearings held under 12 different acts under other circumstances, the individual ministers who would have responsibility for the administration of those acts would still retain responsibility. In so far as there would, in some instances, perhaps have to be a lead ministry in terms of this legislation, although that has to the best of my knowledge not finally been determined, I would expect that it would either be the Minister of the Environment or perhaps the Attorney General, who has responsibility for the Ontario Municipal Board.

Ms. Macmillan: May I say something?

Hon. Mr. Norton: Yes.

Ms. Macmillan: Why hasn't that been said then?

Hon. Mr. Norton: I do not know that that is an essential element of the legislation. That is, as much as anything, an administrative matter within government. I stand to be corrected on that. That is something where the assignment would be made for the responsibility as within the executive council; in other words, in the cabinet.

Ms. Macmillan: This is something that should be up for discussion. If it is going to be done afterwards, it seems to me that--

Hon. Mr. Norton: You can rest assured that it will be one or the other of those two ministries. But as far as the specific responsibility for matters relating to the Niagara Escarpment Commission or the other specific legislation mentioned in the schedule are concerned, both the ministries with administrative responsibilities would retain that. It would not deprive them of any ongoing responsibility.

The question of deferral, which has been raised in a number of contexts, is something which I would like to address briefly. It is certainly not the intention that this legislation would permit matters of import and of public concern to be deferred in a situation where there would be no hearing. I am wondering if some alternative wording might resolve that concern.

For example--and I just try this on you, and perhaps the other members of the committee--where section 5(4)(b) states, "the joint board may direct that the matter or part deferred be decided without a hearing." My remarks from yesterday explained what the intent of that section was. Would it resolve any of your concerns if we were to add in there wording similar to section 7(2), where it says, "if the joint board is satisfied that...(it) is not unfair to any person entitled to be heard at or to attend the joint board hearing"? Something of that nature to indicate that it is not--

Ms. Macmillan: That certainly would not satisfy me. I have been before a lot of boards and some of the decisions they have made I wince at the thought of. I certainly would not be at all satisfied unless it was spelled out what of the rules of the board were.

I do not think you can leave it to individual boards or people to make these decisions, I am sorry. It has to be in the act somewhere so that they have guidelines.

Hon. Mr. Norton: I have tried it on you.

Ms. Macmillan: No, I would not be satisfied.

Hon. Mr. Norton: Section 7, in terms of modification--section 7(2) is what we were addressing, was it not, where the joint board may change of the requirements as to filing documents or giving it notice in respect of any hearing in respect of which the joint board is, et cetera? There is a draft regulation dealing with that, which may be of interest to the members of the committee and perhaps yourself. Perhaps we can share a copy of it. You might wish to have a look at it and speak with me afterwards, or address it in some other way to us as to your response to the provisions of that draft regulation.

Ms. Macmillan: I just would like to say that the way to hell is paved by good intentions. This repetition of, "It is not our intention to," is not clear enough. It may not be your intention to.

Hon. Mr. Norton: But by the same token it is important not to draft legislation so as to leave absolutely no discretion with respect to process in the hands of a tribunal, otherwise that can be equally hamstringing and create situations about fairness.

Ms. Macmillan: I agree. There has to be a happy medium and flexibility. But one assumes that these decisions can be made at the discretion of the board at the time of the hearing. Quite often they do make these rulings and I do not believe that has been spelled out exactly.

However, I agree that you cannot make it too firm, but on the other hand, I do not think you can leave it to their or to your intentions or to their good will, I am sorry. Having had a lot of experience before boards and tribunals, I would rather see things spelled out in the act so that there is no trouble about deciding what their guidelines are.

4:40 p.m.

Hon. Mr. Norton: Have you found that to be a problem under other pieces of legislation on which hearings have been held which you have participated in?

Ms. Macmillan: Yes, I have. For instance, I asked the commission to subpoena. I thought this was something that everybody was allowed to do. Suddenly the ruling was no, I could not subpoena. That was just a decision that the board made.

Those are the sorts of things I have found extremely hard to swallow. I would much rather see these things in black and white than have it left to the vagaries, if I may say so, of different boards or different tribunals. I may be supersensitive, but I think I have had a lot of experience.

Hon. Mr. Norton: Has that happened to you on more than one occasion? I am just advised of one occasion and that was before the Environmental Appeal Board.

Ms. Macmillan: No, only one. I asked for a subpoena for the Ministry of the Environment hydrogeologist and I received it through the Environmental Appeal Board and it was very useful. And I asked for a subpoena at the appeal board and I was turned down.

I thought this was a denial of natural justice, but I did not do anything about it because what can you do? You have to obey what the hearing officer says. You cannot argue with him; he makes the final decision. He makes the ruling. So I would like to see something that spells it out to these people far more--I would like to see something spelled out. I would rather go that way and be a little bit more firm than your way of being a little bit too flexible.

Hon. Mr. Norton: The remedies in that situation could be costly, I suppose, in terms of seeking judicial review (inaudible).

Ms. Macmillan: It is so costly for me to go to a hearing anyway because I do not get any tax rebates or I cannot charge it to expenses. Seven thousand dollars was nothing for that Maple thing; it was a terrific cost. So I am not go and take them to judicial review and have another \$7,000 down the drain. That is why I am so adamant about things being spelled out before we get into these problems. It is only fair to both parties.

Hon. Mr. Norton: The concern you expressed about section 8(3), which is the one where the joint board may appoint a class representative. As I understand it, that specific provision was included originally in the Environmental Assessment Act at the request of citizens' groups who were concerned that there be an opportunity for class representation, and also protection, in this

instance, at the discretion of the board for individuals who may be able to distinguish their interest from the class.

Ms. Macmillan: Then we have the discretion of the board. It depends very much on what the chairman felt like that day. Our experience--I am only telling you what my experience is--is that it not always easy to fight this and it takes days and days to try and show them that your interests are not the same as the town and it takes up a lot of time.

Hon. Mr. Norton: But in the instance that you cited, you were successful in that.

Ms. Macmillan: Eventually, but it was a hard, long struggle and we could have given in--I think to the great detriment of the hearings, because we could not possibly then have articulated our various concerns, which were not common.

Again, I do not think you can be too specific. That is tying you down to something which does not work, in my experience.

Hon. Mr. Norton: Which is that? I am sorry--

Ms. Macmillan: This section 8. It is making it very definite. I am sure that it can be worked out. But it has not been my experience that it works under this type of section.

Hon. Mr. Norton: Have you had experience where a board has utilized that sort of situation where it was not a problem for you?

Ms. Macmillan: No, that was the only time it was ever used.

Hon. Mr. Norton: That was the only time.

Ms. Macmillan: I have been speaking to the Canadian Environmental Law Association and I think they will be speaking tomorrow on that. I think they have had other experiences, but certainly I can classify that as being a big stumbling block we have to overcome amongst many others. It took time, patience and a great deal of anguish on our part to be told perhaps we were not going to be allowed to cross-examine. We felt as if we were losing, that natural justice was not being done.

Hon. Mr. Norton: You have expressed concerns particularly as they relate to the Niagara Escarpment Planning and Development Act and it is our opinion that the concern you have with respect to the plan, if you read section 24--since hearings, as I understand it, have begun--that it would be excluded from the provision; the finalization of that plan would be excluded from the provisions of this legislation, in any event.

The section suggests that if a hearing had commenced, or hearings had commenced prior to the proclamation of this legislation, then this act would not apply. It was just pointed out that would be unless the proponent, in this instance the Niagara Escarpment Commission, asked that it apply.

Ms. Macmillan: Yes. That is why I think discussions with them would be profitable, because I am sure they have not considered this. I do not suppose they have had time to. I would like to know what they think of this because CONE might have different ideas. When we discussed it with them, one of my recommendations was that this should be discussed.

Hon. Mr. Norton: Although I have not personally discussed it with them, I understand that there have been discussions with them about it.

Ms. Macmillan: Right, but I do not know what the results of those discussions are, so I could not agree to that without having found out what they thought. I would have to take this all back to my board and we would have to discuss this because we are a coalition.

Hon. Mr. Norton: Could you look at section 5(6) for a moment?

Ms. Macmillan: Yes.

Hon. Mr. Norton: The one which you and, I believe, Mr. Renwick raised some concerns about, and the concern that it might result in the abolition of a hearing. It is important to read that subsection 1 of the same section.

Mr. Renwick: Subsection 1 of the same section?

Hon. Mr. Norton: Yes. If you see the way in which subsection 1 is worded, it says, "The joint board shall appoint a time and place for and shall hold a public hearing in respect of the matters in relation to which a hearing is required or may be required or held as specified in the notice to the hearings registrar under section 3."

Ms. Macmillan: Yes

Hon. Mr. Norton: The reason for the conclusion of subsection 6, those specific provisions--for example, a project of some description may be initiated, or at least the planning may be initiated--is that it may be anticipated that it may require hearings under several acts.

If the proceedings under the Environmental Assessment Act are followed through and no one requests a hearing, or if, in the case of the Ontario Municipal Board, it is a matter under the Planning Act, if the periods of notice and so on expire and no one requests a hearing, then by virtue of there having been a request that would initiate or bring this act into play, we did not want the board to have to hold a hearing under all the acts, unless--if you will note the wording here--"in those circumstances where a hearing would not be required or would be dispensed with under the act specified in the schedule."

4:50 p.m.

I do not see that as saying that the board could arbitrarily dispense with a hearing. But if the application went into the

registrar under this act, and it subsequently became apparent that no one was requesting a hearing under the Environmental Assessment Act or under the Planning Act, under those circumstances, the board would not be required to proceed and hold a hearing under those acts.

Ms. Macmillan: The problem is who is going to be made aware of this? When it is stated that no one is requesting it, is it something like the Niagara Escarpment? Is it going to be everybody in Ontario who has an interest in the escarpment because it is a provincial interest, or is it going to be restricted to 500 feet? Environmentally, you really cannot restrict people to 500 feet any more.

Hon. Mr. Norton: The Environmental Assessment Act does not do that.

Ms. Macmillan: I know. But are we always going to be talking about the Environmental Assessment Act? Aren't there all sorts of other acts that come into this?

Hon. Mr. Norton: Yes, but it may be a combination of acts that does not involve the Environmental Assessment Act. That is possible.

Ms. Macmillan: Right. So you see, you do not have a standard requirement. You do not have a standard set of rules for who can request it, do you? Although you have a consolidated act--

Hon. Mr. Norton: But, you see, up that point, the provisions, I would think, of each of the individual acts would have to be followed.

Ms. Macmillan: Okay, then that is all right--if no one has requested it under the specific act. Yes, I can see that.

Hon. Mr. Norton: The question of standing, which was raised in your exchange with Mr. Renwick under section 8(1) clearly states: "A person entitled to be heard at a hearing or to take part in proceedings before a tribunal that has a power, right or duty to hold a hearing in respect of which a joint board has been established has the same entitlement in respect of the proceedings before the joint board."

In other words, no one loses his right to standing as a result of this act coming into place. Persons who would have standing under each of the other acts would have standing under this.

One additional provision, which is subsection 4, is really intended to add to that by taking into consideration an umbrella group like the Canadian Environmental Law Association, who may not, under a given piece of legislation, be a land holder or a ratepayer, but they may have a legitimate reason for wanting to participate. This would permit the board to specify that they are a legitimate additional party.

Ms. Macmillan: I think that is very good.

Hon. Mr. Norton: That also is included in the hope that it might be applied in some instances, especially in matters involving environmental matters, to interested persons or perhaps even governments from beyond our borders. That is certainly something we would like to provide for in view of the interest that we have, especially these days, in terms of status at similar hearings in the United States.

Ms. Macmillan: Yes, I can see that. I read your argument there and I can agree with it.

May I just go back for a second to 7(3), "Subject to this act and the regulations, a joint board may determine its own practice and procedure." I think they should be bound by the Statutory Powers Procedure Act. Nowhere in this act do I see that.

Hon. Mr. Norton: The Statutory Powers Procedure Act does apply under the provisions of that act.

Ms. Macmillan: As long as that is quite clear.

Hon. Mr. Norton: I think it is clear in that act. There may be some provision for variation from that under certain circumstances, but generally it does apply.

Ms. Macmillan: I kind of missed that.

Hon. Mr. Norton: It is not spelled out here specifically because apparently it is expressly--

Ms. Macmillan: Could it be spelled out here without too much trouble--or is it redundant?

Mr. Jackson: It would be redundant. It would raise questions why it was not in other acts if we put it in, but the Statutory Powers Procedure Act does apply here.

Ms. Macmillan: I find that something handy to hang one's hat on.

Mr. Swart: I have one general question. I want to ask you about the principle in this act. The concerns you have brought forward were expressed in second reading of the bill from this side of the House. One concern that I and perhaps some of the rest have, you have not mentioned. Perhaps it is not fair to ask you, but you have had much more experience than almost anybody in this province attending these hearings. It has to do with a grouping together of the hearings under this act. Do you think there may be some possibility of subordinating certain of the considerations under one act?

Let me be a little more specific or try to put a little more clearly what I mean. Under the present legislation you would have an environmental hearing, perhaps, first. Let us take a case where there was going to be a dump put in the parkway belt. Normally I guess you would have three hearings, one on the parkway belt, a second one under the Planning Act and a third one under environment. Each of those hearings would be a hearing about a

specific aspect of that dump going in there with the whole decision to deal with that and only that.

When you hear all three of those at the same time, will there be the possibility, in your view, that the board might say, "Well, certainly in two thirds of this it should be allowed and on balance, therefore, we are going to permit it;" whereas under the individual hearings, the board hearing under the Environmental Assessment Act would only deal with that aspect and on balance they would say, "No, that should not be permitted in that area; therefore, we will turn it down"?

We have had plenty of examples around this province. In Niagara Falls there were two. Under the Environmental Assessment Act the Niagara region solid waste dump was approved, but under the Planning Act it was turned down.

Is there going to be some diffusion of the decision making on each of these issues, in your view--perhaps the legal representative we have here would want to speak on this too--if it is all considered at one time and made by one board? Are they going to say, "Environmentally it is not the best, but on balance it conforms to the other and is desirable"?

Have you thought about this? Do you have any concern about this? Would it be possible to write something into the act whereby consideration must be given to the various aspects as if hearings were being held separately on them?

I am not sure I made myself clear, but that is the question. Is there a danger? I think all of us recognize that we want to get away from a multiplicity of hearings, if we can, with regard to cost and time. But if that sort of thing is going to happen, then it will be a disadvantage.

Ms. Macmillan: I am concerned because from my own observation, the environment always does rather badly. It comes off second best. That has happened. On the escarpment, I only have to mention Cantrakon. Environmentally it was not right, but the decision was made that it was in the economic interests of the province that it should go in. That is one case where an economic consideration overruled an environmental one. I see this all the time.

5 p.m.

So I do have concern that the environment is going to come out second best and I certainly have concerns about the Niagara Escarpment Planning and Development Act disappearing or being whittled away. That is one of the reasons I am not sure I would like to see the Niagara Escarpment Planning and Development Act stuck in this package. I would like more time to think about it. We might be better off with an implementing body that knows exactly what the act says and does not have any other considerations, that's it.

I do see that this could be subordinating to one or other interests. If you say two thirds are in favour of it, the

environment will probably come off worst. I think that is a risk that is inherent in the present system. This is a problem. How valuable is the environment over economic considerations?

Mr. Kerrio: You brought up some matters that of course are of concern to the committee. One point you have made I think is worth elaborating on a little because of hearings I attended in New York state on SCA, where a matter that was considered just a part of the specifications or not important to the hearings in one sense, had it been left out, would have not pointed up something to us. I will pose this to you for whatever it is worth.

In the description of the pipeline that was going out to the river, while size might not have been a factor, one thing that was mentioned was that if it had been left out we would not have known the serious consequences of what they were proposing. This was that every 10 feet there was going to be dispersal nozzle.

That was telling us something that we would not have known about this discharge. If it had been a pipe and they were not worried about the impact on the environment, it could have been just left open and out it goes. But the fact that it had dispersal nozzles on it told us something. In some instances, to circumvent details may very well be a way of keeping from us some very important information.

The concern you have about including the Niagara Escarpment Planning and Development Act would only be, I imagine, a concern to you if the minister could not say to us gathered here that under a joint hearing you would not circumvent any of the regulations in any of the acts; that because the joint hearing was such that you brought the parties and various boards together, the fact that you are giving information to the assembled boards is a convenience; but that would not have any regulations of any of those boards circumvented, negated or left out. I imagine that would be the condition I would like to hear the minister tell us is a fact. That is a major point.

Ms. Macmillan: Those are two very good points and I did make that point when I said it is no good saying "all minor technical." You do not know how minor they are; you do not know how major they are. We struggled for five years at Maple and found a lot of things they said were too technical, too complicated. It was not too complicated and it was often wrong. A lot of stuff came out that I think made the whole exercise an improvement. So I would really not suggest that every technical detail be left out. You are quite right, it can lead to something of great importance. Certainly that is my experience at Maple.

On the second one, yes, I would like to hear that too because it would set my mind at rest.

Mr. Kerrio: Just one other comment I would like to make about the section you related your concerns about, the choosing of a representative for class actions. I think that section should really give some latitude to those groups and classes and parties that might appoint their own representative to bring a concern to a focal point and not have the board make the determination on their behalf.

Ms. Macmillan: Exactly. I find that an insult.

Mr. Kerrio: I would rather see it read, "The joint board may accept from a class of parties to the proceedings having, in the opinion of the joint board, a common interest, a person to represent the class who has been chosen by that class."

Ms. Macmillan: Exactly, that is a much better recommendation, and those who wish to be individuals can be individuals.

Mr. Kerrio: Why did they not have the option?

Ms. Macmillan: Because quite often you cannot join with someone because you have 20 different interests and you cannot keep whispering questions to them. You have to do it yourself.

Mr. Kerrio: But you could have a class that would agree to and probably would feel better for having a spokesman for their group chosen from among them.

Ms. Macmillan: Yes, that is what happened in Maple. They had one group that was concerned about the traffic and that was all they were concerned about and they got together and made a very good presentation; the Canadian Environmental Law Association. There were others who were concerned about particular streams on their own properties for whom nobody could speak, because nobody but the property owner knew.

So you have to allow the discretion of the people who are at the hearing. It is an advantage to get together financially but it is not always an advantage to get together from the point of view of getting out the evidence.

Hon. Mr. Norton: I will try to be brief. In terms of the concern that has been expressed repeatedly about subsection 3 we will certainly undertake between now and tomorrow to see if we can revise that to address that concern, because I know that you say the road to hell is paved with good intentions.

Ms. Macmillan: I think that is the quote. I cannot remember whether it was the road to hell or the road to heaven. I think it is hell.

Hon. Mr. Norton: I think it is hell, but that is not our intended destination. If we can come up with a modified wording to that section that addresses that, we will probably present it to the committee tomorrow.

Mr. Renwick: I am glad to hear that.

With the chair's permission, I have to go back into the House to speak almost immediately. I did want the minister to be aware of something of which I do not quite understand the ramifications, so that he could think about it overnight.

Would you look at section 8(1), where the person who is entitled under one of the acts in the schedule to be heard can be

heard before that? You are therefore by reference taken back to the word "person" in those other acts.

If you will look at the memorandum which Ms. Madisso prepared for us in legislative research, you will note on page two that while "person" is defined extensively in the Environmental Assessment Act and also the reference to "public body," which is included over the page in the Environmental Assessment Act, she points out very clearly that under the Environmental Protection Act there is another more truncated definition and under the remaining acts there is no definition of person. In that case, of course, I guess you go back to the common law and the Interpretation Act.

It does seem to me that there is the potential for a significant problem if the word "person" is not defined extensively as it is in the Environmental Assessment Act. In each of the other acts that are in the schedule I recall very clearly that we spent in committee considerable time in 1975 making certain that the word "person" was broadly and extensively defined. I happen to think it is quite a good definition, subject to one other comment, because it defines "person" and then over the page also defines "public body" where "public body" appears in that definition.

What I would like to see, if I am correct about the potential of concern, is that each of the other acts should have the same wording. I do not think it is a matter of substance, I think it is a matter of procedural clarity, and I would hope that your advisers would consider that when they are considering making other amendments.

5:10 p.m.

Let me make one other point, a crown agency, within the meaning of the Crown Agency Act, to the extent that I can understand it, excludes the Hydro-Electric Power Commission of Ontario. The Crown Agency Act says specifically, "This act does not apply to the Hydro-Electric Power Commission of Ontario." It is now no longer called the Hydro-Electric Power Commission but the act was never amended.

My concern is not that. My concern is, is it intended to continue to exclude the Hydro-Electric Power Commission, because it seems odd to me that particular institution should be excluded? That is simply by looking at the Crown Agency Act.

I just want you to look at it because I do not quite understand clearly what is the net effect of those references back to all of those other statutes about the named person, and I do not understand the relationship of what is now called the Hydro-Electric Power Corporation, or whatever it is called. Is it excluded because of this reference in the Environmental Assessment Act to the Crown Agency Act? Would you be good enough to ask your advisers to look at them and we can discuss it further tomorrow morning?

Hon. Mr. Norton: Not to preclude that examination which

we will undertake just to make sure, but on those two points my initial response would be that where there is a deficiency or a lack of a definition of "person" under any other act, then presumably the board would be bound by the definition of "person" in this act.

Mr. Renwick: That is my problem. It says "presume;" that is my very problem. If you cannot find the definition of "person" in the scheduled acts, I do not know how you can then get back and say it must mean "person" as defined in this act. You see my point. I just want it clear.

Hon. Mr. Norton: Maybe that should be more explicitly spelled out.

Mr. Renwick: The easiest way, I think, is in some way or other to make certain that each of the scheduled acts has the identical definition that you have transposed into this act from the Environmental Assessment Act, including the addition of the definition of "public body" and including some clarification about the exclusion under the Crown Agency Act of the power corporation.

Hon. Mr. Norton: Maybe some modification of section 8(1) would take care of that. We will check that out. I think probably Ontario Hydro would be caught and included as a public body but if that is not the case we will--

Mr. Renwick: I have difficulty again as a lawyer, that if the Crown Agency Act says crown agency excludes the hydro corporation, I have difficulty coming in under the back door of some other part of the definition. I leave that to your tender mercies.

Hon. Mr. Norton: We do not want to exclude Ontario Hydro.

Mr. Chairman: I might mention that we have Mr. Poch here and we should remember that he is scheduled to go on today and I believe is in a hurry to go on elsewhere.

Hon. Mr. Norton: I have not finished my response to Mr. Kerrio, I believe.

Mr. Chairman: Would you carry on then, please?

Mr. Charlton: Thank you, Mr. Chairman.

Mr. Chairman: No, the minister will finish his remarks to Mr. Kerrio and then yourself.

Hon. Mr. Norton: Related to the concern of whether the standards under other acts and things that will be required to be considered by the board under the other acts, might in some way be compromised. I think Mr. Swart raised that as well, did he not?

There is nothing in this act that would relieve the board from the responsibilities imposed on them under those other acts to carry out the provisions of those acts. This act is essentially a procedural one. It does not, in any way, alter the onus upon the

board, the same onus that would be on the appropriate board if it were an individual hearing.

That does not necessarily preclude the concern you have expressed that in hearing all the evidence there might be some different weight given in this setting. I do not know how one deals with that with absolute certainty. I would hope and expect that a board dealing with a very complex matter may, within the hearing, establish certain sequential standards and decisions to be made throughout the hearing.

In other words, they might start with the environmental assessment. Then, having dealt with that, they would move on to the planning considerations and so on.

Mr. Chairman: Are you finished with that, Mr. Minister?

Hon. Mr. Norton: Yes.

Mr. Charlton: Can I deal quickly first with a couple of additional comments or questions about section 8(3)? As I understand it, I think what the minister said was that he concurred with the concern you expressed. Basically, the concern you expressed was not that groups should have the right to have a joint representative where there was a common interest, but that they should not be forced to. If I heard the minister correctly, he was prepared to try to deal with that in the wording.

Hon. Mr. Norton: Between now and tomorrow when we will be resuming the session, we will try to see if we can come up with modified wording which would address that concern.

Mr. Charlton: Okay.

Ms. Macmillan: To me, that would cut off some peoples' rights through a decision of the board which very nearly happened. It is something a lot of people would be prepared to fight very hard on.

Mr. Charlton: In dealing with section 5 and the concerns that have been expressed around deferring matters or parts of matters and deciding some of those matters without hearing, the minister has again--and the minister can correct me if I am wrong--tried to indicate that the intention was not to defer any matter and then decide it without hearing where a hearing would be required under any one of the respective acts in the schedule.

It seems to me that we can probably fix this just by being a little more specific in some of these sections, so there is no question. I refer you to the document Mr. Renwick requested from library research which I distributed earlier. At the bottom of page one and on page two, it deals with sections 5(3), 5(4) and 5(6). There is some suggested wording in terms of what section 5(6) is intended to mean.

This is in the paragraph at the top of page two. It comes in at the bottom of that paragraph.

First, could I ask the minister if the wording here is what is intended by section 5(6)?

Hon. Mr. Norton: The only shortcoming in this response is that there is a provision in the Ontario Municipal Board Act which provides that a board shall hold a hearing and also authorizes the board, under certain circumstances, to dispense with a hearing. But the provision of that act would not apply to hearings under other acts. In other words, in this act I should not think that it would. That is why this is a difficult section to word.

5:20 p.m.

If you notice, the wording on page two of the brief, the third line from the bottom of the paragraph at the top of the page says, "only if a hearing would not be required under the act specified," and the wording in the section is, "satisfied that in the circumstances a hearing would not be required or would be dispensed with under the act."

I do not know of any other act that has the same provision as the Ontario Municipal Board Act. For example, they would not be able to use the provision of the Ontario Municipal Board Act to dispense with a hearing under the Environmental Assessment Act or anything of that nature.

Mr. Charlton: Although the point you have raised about "dispense" may be appropriate in terms of a reference to a specific act, at the very least there is some question of clarity in the way that 5(6) is worded in the bill.

Hon. Mr. Norton: But it does refer specifically to the lack of a requirement for a hearing or how to dispense with the hearing under the act specified in the schedule. I think that ties it in quite specifically.

Mr. Charlton: Maybe where I have to go to get at the what I am looking for is exactly what 5(4)(b) means.

Hon. Mr. Norton: It means what it says. The board can defer some part of the matter to be decided at a later date by themselves or someone else without a hearing.

As I explained yesterday, the intent is that it would apply, perhaps, in specific cases of very minor technical matters which ultimately may be decided by a responsible director within the ministry, for example, in terms of approving final technicalities.

However, I have already indicated that we will look at that section between now and tomorrow to try to resolve the concerns about it.

Mr. Charlton: If I can take it a little further, it has been mentioned, and that is why you agreed to look at it, that some of the apparently inconsequential technicalities, which you talked about yesterday and Tuesday night, sometimes may be very important.

Hon. Mr. Norton: That is why we want to have some time to think about that between now and tomorrow, to see if we can revise the wording in order to make it even clearer.

Mr. Charlton: We still have a fair bit of the process to go through and I would still like to get a couple of things cleared up in my mind about 5(6). But would it not deal with the concerns around 5(4)(b) if that section were broadened to include the kind of wording in 5(6)?

Hon. Mr. Norton: That is one of the things we will look at and see if that wording would apply appropriately there.

Mr. Charlton: Is that basically the kind of thing you are looking for as well?

Ms. Macmillan: My concern is who is going to decide whether it is minor? Is it the board, the ministry? It is not under the act. It is not a procedural thing, just a sort of gut feeling that this is not important, therefore, let's not discuss it.

How do they decide it? You see, there are no guidelines, no standards. I think you have to put them in; otherwise a lot of big things could be left out. I have read your remarks and they just did not satisfy the intent of the investigation.

Hon. Mr. Norton: We will try to address that.

Mr. Charlton: That is all I have at this time, Mr. Chairman.

Mr. Mitchell: Mr. Chairman, I have a procedural matter to raise. I think, looking at the time, and since the discussions have gone on for as long as they have--and there have been good questions; I am not knocking what has gone on up to this point--that we should ascertain whether Mr. Poch is available to come back tomorrow, although we have another group scheduled for tomorrow, but we are rapidly running out of time today.

Mr. Chairman: I could make a comment that this seems to happen constantly. Yet, if the chair attempts to use any muscle and make people adhere to time, then we get the muzzling suggestion.

Mr. Mitchell: I am not suggesting that, Mr. Chairman.

Mr. Chairman: May we carry on with Mr. Poch? That was the last speaker before Mr. Poch. We would ask the members if you could be brief so that Mr. Poch can, if possible, finish today. I would mention to him that we must rise at 5:45 because this is Thursday and we must go back into the House. Correct?

Mr. Breithaupt: It certainly is Thursday.

Mr. Chairman: The puzzled looks I see on the Liberal faces is sleepiness rather than question. Is that correct?

Mr. Poch.

Mr. Poch: Thank you, Mr. Chairman.

By way of background, I am a practicing lawyer in the city of Toronto with my firm of Vaughan Willms. About 95 percent of our work is land-use planning, municipal law and environmental law. I am a former scientist with the Ministry of the Environment, water quality branch, and I am at present chairman of the Canadian Bar Association, environmental section, in Ontario and am on the National Council of the Canadian Bar Association, representing Ontario. I am also on the Ontario Council of the Canadian Bar Association, as well as being editor of the Canadian Environmental Law Reports.

I have a little bit of background in the area. My practice is extensively environment oriented, as Jim Jackson is well aware, and I am sure the minister is, too. I have a lot of points to raise. The time, Mr. Chairman, that it would take for me to raise these points, without comment from any of the members of this committee, would be at least one hour, and that is a very conservative estimate. Obviously we will not be able to address anything close to what I propose to address. I think this is probably one of the most important acts, from a practitioner's viewpoint, that has come before the Legislature at any time in the recent pass.

I come before this committee not representing the Canadian Bar Association, not representing anyone but myself as a practitioner of law in the field which will be directly affected by this act, which is a procedural act. It is not dealing with substantive matters. Substantive matters are dealt with under the other acts and I will not address those matters here--inasmuch as I can stay away from them, at least--as a practitioner before the Environmental Assessment Board, before the Ontario Municipal Board, representing municipalities from the size of the city of Toronto to the township of Harwich, representing developers, representing ratepayers, representing industry.

5:30 p.m.

I propose to address my procedural concerns with this bill from a viewpoint of a solicitor representing a client. If I may, I would like to have a little discourse with the minister directly here.

A number of months before you became minister, I had the chance, one evening, to speak to your predecessor, Dr. Parrott, about the forthcoming bill. I advised him, as chairman of the environmental section of the Canadian Bar Association, that many of my members had raised concern over the forthcoming bill. Everyone has realized for the last two or three years that there would be a streamlining of the hearing process and that there would be a bill forthcoming.

I asked Dr. Parrott at the time whether our section would have time to comment on the bill itself, in the light of the comments from many of my members, who felt it very necessary that they have input into a procedural bill which will involve them. They want to make it work. They do not want to have to go into

divisional court on a judicial review application every second week to find out where they stand. It is costly for their clients, it is costly for them; their practice can fall apart at times. Dr. Parrott said, "Yes, we will endeavour to let the Canadian Bar Association have input into this matter."

I received notice of the bill towards the middle of last week. Jim Jackson had mentioned to me, on June 1, that it was in the works. I received a copy of the bill just a couple of days ago. As soon as I received a copy I sent it over to the Canadian Bar Association office for distribution to the members in my section, and that membership is now at least 300 practicing lawyers, many of them dealing exclusively with environmental and land use planning matters.

The CBA has not had time to run off and send out copies of the bill because of other pressures they have had at this point. But a number of my colleagues, to whom I mentioned that I would be appearing before this committee, desired that I at least put to you the fact that they are very concerned that they will not be able to have direct input to this committee of their concerns which may be raised.

They may or may not have concerns, but they were very concerned about the way they feel this bill is being steamrollered--that is the word I have heard a number of times. I have that problem myself. This bill has been kicking around, at least in somebody's head, for the last two or three years. Yet, from June 1 until summer recess, which I guess would be a three-week period, the bill would go from start to finish. That is what I understand has been proposed.

The bill is going to affect the practice of law, environmental, land-use and municipal planning law, for at least the next couple of years, if not longer. I would encourage reconsideration of attempting to pass this bill without complete input from the profession and interested groups, at least a couple of weeks for the bill itself, and to respond.

On the subway last night, and staying up until about 4 a.m., I tried to put together some comments. I have not done justice to the bill itself. I have no problem at all with the theme, the thesis of consolidation of hearings. I can commend the government and the Ministry of the Environment representatives for attempting to come to grips with a mammoth problem. But I do not commend the steamrolling--I use that word again--of this bill.

In the light of Dr. Parrott's statement, the concerns of my fellow practitioners with whom I have spoken, my own concerns with the bill itself--and I see gross inadequacies, omissions, problems with the wording, not the theme, of the bill itself, from a practitioner's viewpoint--I would ask that you reconsider the scheduling of the attempted passage of this bill, for fuller consideration by this committee of concerns which may be raised by other persons, and also myself, on more reflection and time to reflect on the bill itself.

I could go in right now--we have a few minutes. I could

start up. I have a lot of general concerns and I have very specific concerns with a number of the sections--well over half of the sections and subsections in the bill. I am in your hands, Mr. Chairman.

Mr. Chairman: Mr. Poch, would you go as hard as you can, as long as you can tonight, and then it is quite fair for you to come back tomorrow morning because the time has not been fairly assessed.

Mr. Poch: Okay.

Mr. Chairman: But remember that we are under the constraint of next Tuesday.

Mr. Breithaupt: Just for the benefit of the committee members, could we get a response from the minister as to this comment about whether a better bill would result. The theme is something which everyone accepts; there is no question about that. Why is it--and it may be that I just was not listening--that this must be done now, say, as opposed to the fall session, if that was better to complete the legislation? Perhaps the minister could just give us that information because it would be helpful.

Hon. Mr. Norton: I am not sure I can comment on whether or not further deliberation will result in a better bill. Presumably that is the case. The longer one can contemplate revisions and improvements, then presumably there can be improvements made. The fact is that we are living--by we, I mean the government is living--with some serious time constraints on this matter as well.

One thing I would point out is that initially the bill will not be compulsory. It will be activated at the request of a proponent. I am wondering how you would feel if we were to say that at any time up to the date named, which is unspecified--it may be some time yet into the future--we would receive any further submissions on the application of the bill and the problems you foresee, in terms of practice; we would undertake to consider and, if necessary, introduce amendments in the fall, but not to delay certain pressing matters where this may apply in one or two instances in the intervening period. It may not be the ideal way in which to proceed, but I do not want you to think that because of our time constraints we want to preclude further input.

Mr. Poch: I understand your position, Mr. Minister, but I have a tremendous amount of problem with that position, which is saying to me, "We will listen and we will possibly make amendments if they are of a beneficial nature and agreeable to the government." To me, what you are saying is that everything should be heard, all matters should be heard and addressed and we should have proper input--after the fact.

I would prefer to see the bill go to the Legislature in a form which the members of the Legislature could address after the practitioners in this province, who will be directly affected by its ambit, have had a chance to input into the system. I realize that Mr. Jackson and his colleagues have spent considerable time

in putting together this bill from the government's viewpoint. The viewpoint of the practitioner has not been heard and I think that it should be heard before the act itself becomes law, not necessarily proclaimed as would be the situation here.

5:40 p.m.

I am saying I see problems personally as a practicing barrister, in this case, with the implementation of the act. I have a number of assessments coming up, a number of Ontario Municipal Board hearings coming up that if we were under the provisions of this act right now, would be into the divisional court tomorrow--at least our clients would be contemplating an application to the divisional court for judicial review--because of the ambiguity of a number of the sections.

All I ask is that you consider, not postponing indefinitely, by no means; I would love to see this bill in a form where I could live with it past yesterday.

Hon. Mr. Norton: I realize you have had very little time to review it to date. In view of the limited time today, do you have any notes that you could share with our staff, so that they could review those, even between now and tomorrow?

Mr. Poch: I can show you my scribbles--and that is all they are basically, stated like this, Mr. Minister--which I think only I can comprehend, because they are cross-referenced with scribbles on my consolidation itself. I do have a few pages that I have had typed up with specific areas, that can be passed out.

I have a time problem in the sense that I had a meeting scheduled for six o'clock this evening. I am in cross-examinations at the special examiner's office tomorrow, positively in the afternoon, which I have no choice but to attend. I have no discretion whether I can or cannot attend tomorrow afternoon. Tomorrow morning I may be able to get out of the cross-examinations that are ongoing at the special examiner's office.

Hon. Mr. Norton: Even though the committee may not be sitting at the time you are free, would you be willing to sit down with our legal staff to review the concerns you have in order to provide us with the benefit of your insight?

Mr. Poch: If that is the best that can be done, yes.

Hon. Mr. Norton: That may not be the only thing.

Mr. Poch: I would like the committee to hear. I have a number of general concerns I should raise at this point. These are by no means anywhere near complete.

Mr. Swart: Mr. Chairman, under procedural--

Mr. Chairman: Yes, Mr. Swart did ask to speak.

Mr. Swart: I am sure all of us on this committee, after

listening to Lyn Macmillan and now to Harry Poch, are concerned about this bill and what appears is going to be the inadequacy of input. There are certainly a great number of questions and concerns with regard to the bill.

My suggestion would be that we hear Mr. Poch tomorrow, rather than saying at this time--I know you threw this out just as a suggestion--that he meet with the legal counsel, because we the committee in the end have to take responsibility for the bill and for the amendments that are going to be brought into it.

I am wondering, after we hear him tomorrow with the details, if we then could make a consideration about whether this committee would recommend that the bill be delayed until fall, whether, Mr. Minister, you might give some consideration to other ways of approaching the very real problems which you have with regard to at least one upcoming hearing, whether there could be scheduling in sequence or something of that nature of those hearings. Although that creates a problem, it might be less of a problem than dealing with the bill without having the advice from so many people who are concerned about it.

My immediate suggestion is that we hear in detail Mr. Poch tomorrow and then after that make a determination of what our procedure should be from there on.

Hon. Mr. Norton: Our problem is that Mr. Poch is tied up tomorrow--

Mr. Poch: In the afternoon.

Hon. Mr. Norton: --at a time that is maybe critical--

Mr. Chairman: Mr. Poch, this committee sits in the mornings on Friday immediately after routine proceedings, from 11:15 or 11:20, until one. I think it would be fair to say that we would take him at his convenience tomorrow morning in priority to the person who's on tomorrow morning. Would that be fair to say?

Mr. Swart: Mr. Chairman, I would just like to conclude by asking, we have not had any additional time given to this committee, so the instructions were to report back by Tuesday.

Mr. Chairman: Yes.

Mr. Swart: Tomorrow will be the last meeting. Is that correct?

Mr. Chairman: Unless we ask for additional time if necessary.

Mr. Swart: That will have to be done in the Legislature tomorrow morning before we hear.

Mr. Chairman: Yes. That's why the clerk had asked me if I would bring it up to the committee before adjourning tonight if we wish him to approach the House leaders to see about time on Monday if necessary. Is that the wish of the committee?

Mr. Swart: It would be my wish that we do that. That doesn't mean that we will conclude on Monday but the committee may decide, in fact, there should be more hearings and the bill should--

Mr. Chairman: But it must be reported on Tuesday.

Mr. Swart: The report might be that there be more hearings on this bill, and we recommend that final passage not be made until the fall.

Mr. Chairman: What is the committee's wish so far as Monday is concerned?

Mr. Swart: I would like to put a motion.

Mr. Chairman: Mr. Swart moves that we ask permission from the Legislature to sit on Monday afternoon.

Mr. Williams: Mr. Chairman, I note we do have one other witness for tomorrow afternoon and, of course, by allowing more than ample time for the first witness this afternoon, we got off track right off the bat. I am not critical of her, nor of you, but circumstances come to pass and, as so often will happen when a good witness is before the committee, we tend to run long, particularly with the first witness. I've seen it happen on so many occasions.

Obviously, tomorrow, if we have witnesses we are not really going to get into the clause-by-clause discussion then. I think that's unrealistic. But I think we should divide the time tomorrow equally between these two witnesses on the understanding that we would definitely start on the clause by clause Monday afternoon.

I'm not prepared, Mr. Chairman, to have the committee sitting Monday afternoon and evening if the House is not sitting on Monday evening.

Mr. Breithaupt: We expect the House to be sitting.

Mr. Williams: Well, I think that--

Mr. Breithaupt: Whether it is or not, Mr. Chairman, this committee will have to sit Monday afternoon and evening.

Mr. Williams: I think Monday afternoon would be acceptable but--

Mr. Swart: We may decide to go to the evening on Monday if there is too much to be done.

Mr. Chairman: But the problem is if we now do it in the afternoon then we will have certain problems getting back to the House to get instructions to sit Monday evening.

Mr. Breithaupt: I think the motion is that we have to ask for it and we may not get it. If we do not get it then, of course, we cancel it.

Mr. Chairman: So Mr. Swart's motion has been made that we seek permission of the House to meet Monday afternoon and evening. We are under additional severe constraints. May we have the question?

Interjection.

Mr. Chairman: There is an amendment being put by Mr. Williams.

Mr. Williams moves that the committee obtain permission to sit Monday afternoon, providing there is a session of the Legislature, concurrent with the House.

Mr. Breithaupt: I would like to speak to this, Mr. Chairman, only because we cannot hope in a couple of hours to put together all the amendments that may be suggested in something that is going to be the operative procedure for environmental hearings in this whole streamlined situation for the next several years in this province. To say we cannot sit one evening because it may be impractical for some of us, is just not a satisfactory way, I suggest, of trying to get good legislation.

So I would hope that the amendment will fail and that we will ask for permission to sit Monday afternoon and evening in order to do at least the best we can with the information we have.

5:50 p.m.

Mr. Williams: Could we stand the motion down and consult the House leaders and get this set up?

Mr. Chairman: No, we must go on with the question. We have this amendment on the floor and we are supposed to be back in the House now.

Mr. Mitchell: Mr. Chairman, I think what has been moved is a tabling of the motion for discussion with the House leaders.

Mr. Chairman: You cannot take one motion on top of another motion. We have a motion with an amendment.

Mr. Mitchell: But does tabling not take precedent?

Mr. Chairman: No, I don't think there is any provision for tabling in committees.

Mr. Kerrio: Why don't you carry on with the amendment, Mr. Chairman?

Mr. Chairman: May we carry on with the question on Mr. Williams's amendment?

Motion defeated.

Mr. Chairman: Now the question on the original motion.

Motion agreed to.

The committee adjourned at 5:51 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CONSOLIDATED HEARINGS ACT

FRIDAY, JUNE 19, 1981



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Bradley, J. J. (St. Catharines L)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Piché, R. L. (Cochrane North PC)
Renwick, J. A. (Riverdale NDP)
Swart, M. L. (Welland-Thorold NDP)

Substitution:

Kerrio, V. G. (Niagara Falls L) for Mr. Bradley

Also taking part:

Charlton, B. A. (Hamilton Mountain NDP)

Clerk: Forsyth, S.

From the Ministry of Environment:

Jackson, M. B., Solicitor, Legal Services Branch

Norton, Hon. K. C., Minister

Young, D. R., Senior Environmental Planner, Environmental
Approvals Branch

Witness:

Poch, H., Barrister and Solicitor, Coalition on the Niagara
Escarpment

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, June 19, 1981

The committee met at 11:45 a.m. in room No. 151.

CONSOLIDATED HEARINGS ACT
(continued)

Resuming consideration of Bill 89, An Act to provide for the Consolidation of Hearings under certain Acts of the Legislature.

Mr. Chairman: Having a quorum, we will continue where we left off yesterday. Mr. Poch, please.

Mr. Poch: I propose, at this time, to go directly into the bill and to direct this committee's attention to specific paragraphs and provisions.

Mr. Chairman: Excuse me, Mr. Poch. Might I remind you that there is another person, Mr. Castrilli, who will follow you this morning. We are sitting till one o'clock. Could you keep that in mind?

Mr. Poch: I have kept that in mind. Unfortunately, we were supposed to start at 11:15.

Mr. Chairman: Yes.

Mr. Swart: Can I ask a question, please? I presume Mr. Poch does not have a written submission. Is that correct?

Mr. Poch: I have no written submission besides the pages that were given out.

Mr. Swart: So we have to take notes.

Mr. Poch: That is right.

Mr. Swart: I doubt if Hansard will even be out by Monday for this.

Mr. Poch: I hope everyone will stay awake by my doing that.

Would you please refer to section 1(g) in the definition section of the bill to the definition of proponent. I would propose that this committee consider including, in the inclusive part of that definition, "officers and directors of a corporation." The reasons behind that are the fact that under the Ontario Business Corporations Act, section 132, the directors of a corporation are charged with a duty of managing the affairs of the corporation on a day-by-day basis.

However, under our environmental legislation, except for a few parts which more than likely will not come before hearings of

this sort, there is no explicit requirement that officers or directors of any corporation do anything. It is generally the wording, "a person having charge, management or control of an undertaking." That itself may not mean the person who, by law, has a duty of managing the day-to-day control and affairs of the corporation.

I have seen this as a problem in many prosecutions under other environmental statutes, where an officer or a director, who has been charged, has not been able to be convicted just on account of the fact that they did not raise their mind to the decision that was made by the corporation itself. They were not part of the directing mind of that decision. The law is pretty clear on that point. I propose that those persons be included in the definition of proponent.

Mr. Breithaupt: Would you make that proposal with respect to section 1(f), in the definition of person "as well?

Mr. Poch: I do not know if I would go that far in that person throughout this act is referred to in many different areas that may not require officers or directors. But it is an inclusive definition. I really have not looked into whether or not it should be included in the definition of person also.

Hon. Mr. Norton: Mr. Poch, perhaps if you would not mind, you could verify why you would be particularly concerned about that. To the best of my recollection, since this is mainly procedural to this bill entirely, there is not an offence section in the bill. Are you thinking in terms of subsequent violations of the conditions of an approval or something of that nature?

Mr. Poch: That was particularly what I was thinking about in the sense that the joint hearing board in its decision can apply certain conditions or terms.

11:50 a.m.

Hon. Mr. Norton: Would those conditions or terms, for example, not be binding upon the corporation and, therefore, by virtue of the duties and obligations on officers and directors under the Corporations Act, be binding upon them through that route?

Mr. Poch: In the cases that I have read, most of the cases say no, unless they were actually part of the directing mind in the consideration of doing a certain act or making a decision.

Hon. Mr. Norton: I am not a corporate lawyer, but I would have thought that surely if a corporation undertook a particular enterprise, the officers and directors would be deemed to be part of the directing mind.

Mr. Poch: The courts have been attempting to cut behind the corporate veil itself in various instances. What I am talking about is cutting the corporate veil here in this provision. By including those words, I think that might be an attempt to help the courts if that is the case later on.

Mr. Breithaupt: In that example, perhaps the point can be considered by the counsel for the ministry over the weekend; and, also, whether person should be expanded to include that theme. If we get a report on that on Monday, then we will know whether that is a good idea or not.

Mr. Poch: I may refer Mr. Jackson to the Regina versus United Keno Hill Mines Limited case of the Yukon Territory court. It was Barry Stuart who decided that decision just recently. It goes into sentencing principles in general in environmental infractions in a very lengthy treatise. He has gone into great detail as to the deficiencies in Canadian law and some of the other laws in other jurisdictions too.

Hon. Mr. Norton:: We will certainly look at that too.

Mr. Breithaupt: Do you have the judgement?

Mr. Poch: I have a copy of the case in my office. It is unreported at this time.

Mr. Breithaupt: An unreported case may not be of much use to us by Monday.

Mr. Poch: I can get it up to you by cab.

Perhaps we could now move on to section 2 itself, the application of the act.

Mr. Breithaupt: There is nothing on the undertaking.

Mr. Poch: No, just section 2 itself. I have not reviewed at all the Ontario Waste Management Corporation bill or, for that manner, many of the constituting acts that would require a hearing possibly under this, and I have not checked every regulation. I was thinking that possibly the words "where a hearing is required under a regulation" could also be included in this section. I do not know if there are any regulations that require a hearing, but there may be some.

Mr. Breithaupt: Should the phrase "all regulations" then be added after the word "acts?"

Hon. Mr. Norton: I think it is a matter of interpretation. Under the act would include under a regulation under that act.

Mr. Poch: I was concerned in the sense that it said, in the last part of section 2, "set out in the schedule or prescribed by the regulations," and it did not refer to acts or regulations in the previous line. That is why I was concerned about that point.

Mr. Jackson: That is a different act we are talking about.

Mr. Poch: I was thinking about the other acts.

Mr. Jackson: That relates to section 19(1)(b), prescribed by the regulations, which enables the schedule to be expanded.

Mr. Poch: I would just raise that point.

Refer to section 3(2), please. This is the actual contents of the notice of the undertaking that the proponent will give to the hearings registrar. Under subsection 1 it is a mandatory requirement to give that written notice. Section 2 sets out what the requirements of that notice are.

I see a few deletions which, as far as I am concerned as a practitioner, could be helpful if they were included. The first one would be that there would be in that notice the requirement that the actual provision of the act or regulation that the hearing is required be stated in that notice and not just the act itself. That will provide guidance. I understand that the notices now under the Environmental Assessment Act and the Environmental Protection Act for hearings do state the exact provision.

Mr. Breithaupt: Could we just clarify the first, Mr. Chairman? Is the theme with respect to adding the phrase "and enabling provisions," or however it might be worded, acceptable to the ministry in that third line after the word "acts," or is that, in your view, not required?

Hon. Mr. Norton: The intention was that the section providing for the regulations prescribing forms would take that kind of detail into consideration. In other words, the prescribed forms would include that sort of detail, as opposed to the body of the bill itself.

Mr. Breithaupt: Mr. Poch, are you content with that?

Mr. Poch: No. I am not content with that in the sense that the bill itself sets out certain requirements of that notice. I see no problem really. It is just a simple inclusion, but it could be a very important inclusion for a practitioner and his client.

Just as important, and I think probably more important, would be the inclusion in that notice of the exact and specific approval being sought by the proponent. There is no requirement that the proponent in that notice set down what approval he was seeking, and nowhere else in this bill is it set out.

Just to know exactly what is being sought is the most important thing that a practitioner looks for at the outset, besides the jurisdiction under which a hearing or matter falls. I would propose that the specific approvals being sought by the proponent be included in that subsection there.

Mr. Williams: Coming back to the first point you made, Mr. Poch, were you suggesting that simply to deal with the absence of reference to regulations, the words "and regulations" be added after the word "acts" in the third line? Was that the point you were making?

Mr. Poch: I would think the word "acts" followed by "and regulations and enabling provisions."

Mr. Williams: That is what I understood you to suggest, that the words "and regulations," however further embellished, would be appropriate in there. That is something that staff can look at.

Mr. Poch: Yes.

Mr. Williams: On the point you are making now, don't the words "the general nature of the undertaking" address the concern you are expressing?

Mr. Poch: No. not at all.

Mr. Williams: Why?

Mr. Poch: The general nature of the undertaking could be a domestic waste disposal site, for instance. Under waste management regulation 824, there are a number of different types of waste disposal sites, which have many different considerations as to the technology.

I am just considering at the outset that there be full disclosure, as much as possible, of what somebody is seeking and the type of proposal he is seeking. I will tie this in with the decision provision later on the act. This requirement of notice, I would propose--

Mr. Williams: But surely isn't the notice simply to put, as it states, people on notice of the fact that there is going to be a hearing? I think back to a situation which I guess is analogous and which you would know, that of appearing before, say, councils, where you are acting for a client seeking a rezoning of land.

Usually the reasons for the application being made is simply that it is the highest and best use of the land. That is the reason they normally give, the standard phrase they use. It does not give you any detail, but it permits the whole proceeding to be initiated and the details flow from that, with very detailed presentations being made subsequently.

I do not know how you can become so specific in simply the notice stage. I do not know whether that is necessarily desirable or realistic.

Mr. Poch: My experience with the notices, on a municipal level at least, is that they are, at this point, fairly specific in nature. Most of them that I have seen and that I have been dealing with append a draft bylaw, which is fairly specific itself.

Just as a practitioner, I would like to know at the outset what relief is being sought and what approval is being sought. If it is approval for a waste disposal site or a waste management

system, different considerations will apply. I would hate to see it be tied down to the specific crossing of the "t" and dotting of the "i" at this stage.

12 noon

Mr. Williams: That is my concern and that is exactly what I think might happen. If you are going to be specific, you can inhibit yourself or prevent yourself from expanding on this. As the information unfolds, people might want to get into other areas. As they see specific terms of reference of the hearing, they might feel that they have straitjacketed themselves and wish that the notice had not been that precise.

Mr. Poch: I understand your position and, as a petitioner who acts for proponents as well as opponents, know the fine line. The fact is that under this act the board will have power to amend the notice. I am not asking that it be set out in this notice that the type of waste disposal site will be a high volume, high intensity, solidification plant using incineration facilities, et cetera. I am thinking of a general description of a waste disposal site located in a certain location which will comprise general types of facilities itself. It is a very fine line, I realize, but I think that idea has to be addressed.

Mr. Williams: You have given one example and I have given another one. Perhaps the staff can toss it around. I do not want to use up all your time arguing the point.

Mr. Poch: I do appreciate your point and it is a very tricky point itself.

Would you please move on to section 3(3), which is the application to divisional court. I have trouble with the consistency of the wording in this subsection with the wording in section 8(1) dealing with parties. In section 3(3) it is, "any person who is or may be affected by an undertaking" and in section 8(1) it is, "a person entitled to be heard at a hearing or take part in proceedings." I would just like to see some consistency throughout the act of how persons are referred to. That is just an aside in itself.

Hon. Mr. Norton: I would just like to point out that I think there is a distinct difference between section 3(3) and section 8(1) in that in the first instance one is talking about action before a notice is filed, at which time it would presumably be impossible to determine the categories in section 8(1), because until they knew the nature of the proposal I do not know how anybody would be able to determine which acts might apply in terms of hearings until the notice was actually filed. Therefore, section 3(3), I think, has to be more inclusive in the sense of not referring to specific acts, but anybody who is or may be affected by such an undertaking, whether or not he subsequently might also be a person who under the various acts would have standing before a hearing.

Mr. Poch: I understand the distinction.

Hon. Mr. Norton: He may be a neighbour within three miles who is concerned about his future water supply. They may, after the notice is actually filed, discover it is something which is not a direct impact upon them and they would not have status under the act.

Mr. Poch: I understand your point. We then move on to section 4.

Mr. Breithaupt: So you do not propose any amendment to the wording in section 3(3).

Mr. Poch: Section 4(10) is a paragraph dealing with the decision of a majority of the members of the joint board. I would ask that this committee look at all of the provisions dealing with the quorum, vacancy and constituent members of the joint board. What these provisions seem to say to me is that the authority, or if I may refer to the exact words, "the establishing authority," would possibly be allowed to appoint a board of 10 members, let us say, and then of those 10 members, two or three members may actually decide just to sit at that hearing itself. Of those two or three members, only one may then decide to make a decision.

I see no requirement in all of these provisions requiring those members appointed to sit on a board to actually take part in the hearing, first of all, and, secondly, to take part in the decision if they are able to do so. I would ask that that consideration be made. If there is a split decision or if there is a minority decision, I would ask, first of all, that there be allowance for a minority decision to be given and, secondly, if there be a split decision that there be consideration given to the fact that the undertaking itself be declared not granted.

Mr. Breithaupt: Is there a response to that point or should some thought be given to that over the weekend?

Hon. Mr. Norton: I would like to give some thought to the last part over the weekend. With respect to the concern you expressed just prior to that in terms of the numbers of members of the board who might be required to make a decision, using the figure 10 and applying subsection 9, there would have to be at least six members of the joint board for there to be a quorum. If there was barely a quorum and a decision was made by a majority, then it would have to be at least four who would support the majority position for a decision.

Mr. Poch: Unfortunately, under subsection 9 the quorum can be changed. As far as I can tell, there is no requirement that it remain one single quorum.

Hon. Mr. Norton: That applies only where a vacancy occurs following the appointment of the board.

Mr. Poch: The other point would be that the quorum is not tied into a majority of the members of a joint board. There is no definition of quorum, except in this act itself I presume a quorum would mean a majority.

Hon. Mr. Norton: I think in subsection 9 it says a majority of the members of the board shall constitute a quorum.

Mr. Poch: I am sorry.

Mr. Breithaupt: There was a suggestion made by Mr. Poch as well in subsection 6(a) with respect to the addition of the phrase "any members appointed under subsection 5" after the words "joint board." Was that of any concern?

Mr. Poch: No, that is not a concern.

12:10 p.m.

Hon. Mr. Norton: Excuse me, we think we heard different things. I think we heard the same thing but we interpreted it differently. You said you were requesting consideration of allowing a minority opinion to be stated?

Mr. Poch: Yes.

Hon. Mr. Norton: You were not saying, were you, that if there were a minority position there would be no decision?

Mr. Poch: No, I did not say that at all.

Hon. Mr. Norton: You were not calling for a unanimous decision by the board necessarily?

Mr. Poch: I am not seeking any requirement for a unanimous decision whatsoever. What I am saying is that if there is a split decision, 50-50 or whatever, but effectively a split decision, so there is not any decision one way or the other, that the undertaking be declared not approved.

Mr. Jackson: There is no majority, so they cannot make a decision and they have to start over again.

Hon. Mr. Norton: It would be a hung jury.

Mr. Jackson: It requires a majority to make a decision.

Hon. Mr. Norton: Or a hung board.

Mr. Jackson: Which is more than half.

Mr. Breithaupt: Are the other concerns to be considered that you had with respect to your notes under sections 8(a), 8(b) and 10(a) for the commencement of hearings and procedures of individuals who can or could not sit?

Mr. Poch: No. If we could move on to section 4(11)(a), which is the powers provision of the board itself, this is particularly why I was addressing my point with respect to the notice itself earlier and the requirements of the notice under section 3. I would propose that the joint board have authority and duty to hold a hearing in respect of, et cetera, which is set out

here, but only in respect of those matters sought to be approved, as set out in the notice in section 3.

This is the fine point. I do not want to see a situation where in midstream a proponent realizes that his undertaking will not be sufficient altogether and is given a right of changing in midstream his undertaking by the board. This has been done before, and a different type of approval for an extremely different type of project has been given without the preliminary requirements under any of the constituting acts coming into place for that new undertaking itself.

It is a very tricky area. I do not know what the wording would be, but I am concerned that the approval sought at the outset be general in nature--and again it is not crossing the "t" and dotting the "i"--and be that approval that is the subject of the decision of the board itself, and not be for another undertaking.

I will refer you, as an analagous situation, to the Maple situation where the Environmental Assessment Board originally heard an application by two separate proponents for a huge site characterized as a waste disposal site of one type, whereas at the Environmental Appeal Board, on appeal, which is a new hearing itself, there was one proponent with a substantially different undertaking for only part of that same location where different considerations would apply. The approval sought was of a different nature, a different type and a different extent from what originally was sought. I understand much of the testimony from the first hearing was brought before the appeal board and it may not have been as accurate as it should have been on the appeal.

I am not thinking of an appeal situation here but of this one joint board hearing. If there is leave to change the undertaking or change the notice in the midst of a hearing, if the approval sought is substantially different or somebody would be prejudiced greatly, the proponent should at least go back to the fundamental steps, the first steps, and start over again.

Mr. Williams: Let me make one observation. This straitjacketing that I am concerned about really flies in the face of what the purpose and intent of this legislation is all about, which is to speed up the hearing process, without denying anybody the right to be heard, by turning numbers of hearings into one.

I would hate to see that very principle or concept undermined by the fact that someone, halfway through a hearing, says, "You are branching out into areas that are technically beyond the precise terms of reference as set out in the notice. In order to do that, you are going to have to start all over again if you are going to broaden the terms."

Surely we can leave the discretion with the hearing officers, for the board that is appointed for that particular undertaking to exercise its discretion. Surely that is what this is all about, to allow some latitude in these matters without straitjacketing. I think you start off on the wrong foot by setting precise guidelines in your terms of reference which can hamper the process and work against the intent of the bill.

Mr. Poch: I appreciate that point. I know that in a number of times I have actually amended a number of matters throughout a hearing as I have gone on. The board has asked that.

An example that I can give you would be an application for a certificate of approval for the operation or use of a waste disposal site. That is the approval sought--the certificate of approval or provisional certificate of approval for the operation or use of a waste disposal site. That is what I would like to see in the notice itself. That is the approval sought.

If the approval is changed down the road, if for one reason or other, they want approval to enlarge or alter what is existing at this time and are seeking a a certificate of approval, it could be a substantially different undertaking altogether than that for which approval was originally sought. That is what I am primarily addressing. It is the approval that is sought at the end. I have seen that, and I am involved in that very same situation right now. That is why I was addressing this one point as deeply as I am.

I appreciate your point because I have been in that same situation, and it is a fine line. I would like the committee, if possible, to take that into consideration because I would like to know exactly what approval is being sought by a proponent, either my client or the opposition, at the outset. A decision should address that approval and not another approval that may be sought later on in the hearing.

Mr. Williams: Your concern is noted.

Hon. Mr. Norton: I appreciate your concern, although I am not sure that the amendment you are requesting would really address it. I think I understand and agree with what you say, that you would not wish to see a substantial change in the nature of the proposal during the course of a hearing.

Mr. Poch: That's right.

Hon. Mr. Norton: I am not sure that the amendment to section 3, in terms of setting out the approvals, would necessarily achieve that. It might, in fact, abort a hearing where there was some technical failure to stipulate something in the notice. If you wanted something in the act, would you not want something that hit more directly upon what you were saying?

Mr. Poch: It is a possibility. I am not a draftsman, unfortunately.

Hon. Mr. Norton: For example, would you not feel, in a circumstance where the ultimate approval was granted for something which was substantially different from what was originally sought, that it might well be quashed by the courts?

Mr. Poch: I don't know.

12:20 p.m.

Hon. Mr. Norton: I have not practised in this specific area, but it would seem to me if the board were to allow for any substantial change from the original proposal that one could attack that in the courts.

Mr. Poch: I don't know. I am sorry, I just don't have the answer to that at all. What I am trying to do is to look at that situation. If somebody were not successful, and I don't know if they would be or not, that situation could only arise--

Hon. Mr. Norton: The only reason I raise that is it may not in every piece of legislation be possible or even necessary to cover all the bases because there are certain practices in the law that would provide a check on any board from going ahead with that, such as the possibility or the likelihood, in certain circumstances, of having the decision quashed.

Mr. Poch: I just do not know whether or not that would be the case here. You could tie in the notice and the decision by the decision reflecting what approval is being sought in the notice somehow. If a certificate of approval was sought in the notice, if it set out that they were seeking a certificate of approval for the operation of a waste disposal site in the notice, then that would be the decision of the board; it would relate to that matter.

That is one of the points I was addressing so that it is not something else that the board decides de facto through its conditions and terms. That is one of the points I was thinking about. The other point is what you are raising about the substantial difference.

Mr. Williams: Rather than belabouring the point further, if the chairman's remarks are to be heeded, we only have about 10 minutes. I do not know how many more sections you wanted to deal with. I do not want to push you, but I think we are under time constraints.

Hon. Mr. Norton: I realize the time pressures we are all living with at the moment, but can I just give you an example of what I am concerned about? If there was a proposal for a waste disposal site, and as part of that proposal there was to be a leachate collection system which might tie into a municipal sewage disposal system and--just so it will fall into the example I am giving--it had to cross a municipal boundary, in giving the notice, perhaps the proponent might overlook the fact that, in addition to all the other acts under which he would have to seek approvals, he might also require approval under the Ontario Water Resources Act.

If in the course of the hearing, perhaps two thirds of the way through, suddenly they discover that they had forgotten--not that they were substantially changing the project--or that they had overlooked, because of the crossing of the municipal boundary,

the fact they would have to have sought the approval under the Ontario Water Resources Act, you really would not want to abort the hearing, would you, in those circumstances?

Mr. Poch: No. There is a very simple answer, and I think it is the practice of the city of Toronto on an application to the committee of adjustment. Most practitioners who apply to the committee of adjustment, when they are seeking a building permit later on, vet their plans and the minor variances they are seeking at the committee through the buildings department at the outset before filing their application with the committee of adjustment to see that everything will be on that application.

It could be a simple submission to the environmental approvals branch of the ministry itself and their vetting of that application of what they are seeking-- Dave Young, for instance, knows the act. I am sure that he or his people could very readily tell a proponent what acts the matter will fall under. That is one method that would solve that sort of problem.

Any practitioner in the field would be stupid, as far as I am concerned, not to seek guidance from the people who will actually be implementing any decision at a later stage and who have great knowledge of what the acts entail, as to what is being sought and what is necessary to be sought. That sort of vetting is common procedure in the practice at the outset. It could alleviate that type of problem.

I do see it as a problem that you have raised and I do not want to see an abortion of a hearing for that one reason at all. But reasonable standard of care would dictate otherwise.

The time, oh, boy!

Mr. Breithaupt: I think it is the most important that we hear the particular suggestions available to us. If it takes a few more moments and if it will resolve doing this all over again on Monday, it is probably time won. You won't have to come back to these sections then.

Mr. Poch: I will refer to sections 5 and 19 jointly later on. I move on to section 6(1) where there is a withdrawal of a notice by a proponent. I would propose that you read subsections 1 and 2 together and that any notice be written and be required to be given to both the registrar and the joint board. The reason is that when you read section 6(2) there is an application that is made with notice. There is no requirement that any application be made to the board if there is a withdrawal.

The system I see is that a notice is given to the hearings registrar that the proponent wishes to withdraw his undertaking. There is no requirement that an application under subsection 2 be made to the joint board, which at that point would kick in the joint board's power to set terms and conditions. The way I read this section at this point is that the proponent could withdraw his undertaking and not apply under subsection 2, and then the joint board itself would have no power to impose terms or conditions.

Hon. Mr. Norton: The distinction that was intended there is that under subsection 1 the proponent may change his mind prior to any action being taken. For example, the joint board may not have been constituted. Under subsection 2 the board may have been constituted and, I suppose, a hearing may have begun.

Mr. Poch: I will give you an example of why I do not see that distinction as being important. Before doing that, I would ask that, besides terms and conditions being allowed to be imposed under subsection 2, that the award of costs be allowed also. I will give the example of one of my clients, the township of Harwich, a municipality in southwestern Ontario where, prior to South Cayuga coming about, the government and a private proponent were co-proponents for one of the two liquid industrial waste solidification facilities.

An application under the Environmental Assessment Act was commenced; the proceedings were commenced under that act. The township we were representing ran up expert fees, including our fees, which are very substantial because we were in divisional court a number of times, of over \$100,000. The situation was that that actual matter did not even get to the point where the government review had been filed under section 7(2) of the Environmental Assessment Act, so there had been no decision whether a hearing was required.

I would anticipate that this is the sort of case that will occur. Townships or persons will ring up tremendous costs from the start of a proposal being submitted by an applicant until such time as a hearing may be required under any of the acts, especially the Environmental Assessment Act where, as I said, over \$100,000 of expert fees were occasioned.

Then the government withdrew its co-proponency of the undertaking. What resulted was a completely different type of undertaking, a domestic waste facility on a different location at the site, under a hearing under a different act--totally different, with totally different environmental assessment documents. And now we are starting all over again, unfortunately for the township. So that is a problem.

Subsections 1 and 2 should be tied in. The board should also have the power to award costs on withdrawal.

12:30 p.m.

Mr. Kerrio: Is that similar to the application by Walker Brothers in St. Catharines?

Mr. Poch: That was one of the two, yes.

Mr. Kerrio: But they did have an agreement with the ministry, did they not, that the ministry would undertake some of the costs?

Mr. Poch: There was an agreement of some sort. I do not want to get into the politics of that at all, please.

Mr. Kerrio: No, I was not thinking about the politics. I was thinking about what happened.

Mr. Chairman: I was just thinking, Mr. Poch, could you maybe start point-forming a little more? In deference to you, I do not want to be rude but there is a rudeness going to be inherent to someone here.

Mr. Poch: I have already spoken to Mr. Castrilli about that point, and he realizes that. But I do not think that the points that I am raising can be summarized in point form. I would love to be able to right now because I have files like that right now.

Mr. Chairman: We may reach the point where we do not reach any point at all, and I suspect it would be better to reach it in point form than not at all, if possible.

Hon. Mr. Norton: I will restrict my comments. Perhaps on some of these things we may reflect over the weekend as opposed to discussing them right now.

Mr. Breithaupt: Mr. Chairman, we may not not have to go through these things again if the matters can be resolved between Mr. Poch and the minister, who has been very particularly involved in this; so we may well be saving time by spending a few minutes now.

Mr. Chairman: Then in deference to Mr. Castrilli, he should not be kept here on false pretences today if we are not going to reach him by one o'clock. Mr. Poch, what do you envisage and what does Mr. Castrilli?

Mr. Poch: I am halfway through my notes and I think I could rush them a little more and get all my points across in that time.

Mr. Breithaupt: If you could do that and we could have Mr. Castrilli return to us on Monday, then we will be able to have all the comments.

Mr. Chairman: Perhaps Mr. Castrilli might, if he has the time, stay until one o'clock so that he does not cover some of the same ground. Would that be fair enough? Thank you.

Mr. Mitchell: Just one question. Has it been confirmed what hours we are sitting on Monday?

Mr. Chairman: We are sitting Monday afternoon and evening. That was cleared in the House today. Hours were not dealt with. We will be sitting following routine proceedings on Monday afternoon and, presumably, eight o'clock until 10:30 in the evening if necessary. We will carry on until one, and then I guess that is the outside limit.

Mr. Poch: If you would refer to section 6(3), this is the amendment of the notice by the proponent. I propose that the

amendment of the notice must be on notice to such persons and in such manner as directed by the registrar, just in fairness to everyone that may be involved, and that there be notice of any change in the original notice. Again, I would consider the fact that the board should have the power to award costs as it considers proper in that case because what might happen is that somebody might have gone to extreme expense up to that point and then have to start again.

Mr. Williams: Are you suggesting sending notice to the hearings registrar and who else? To the other people who have been served originally with the notice? Is that what you are saying?

Mr. Poch: I do not know who. I would leave it either in the discretion of the hearings registrar or the board because they will have a better feeling. I do not want to restrict them because I am sure the notice requirements will change from hearing to hearing. But I think that anybody who received notice originally should receive notice of any changes or amendments or withdrawals, and the possibility of being awarded costs if they have gone to expense unnecessarily.

If we move on to subsection 4, again I would ask that the inclusion of the discretion to award costs be considered to be included there, just in fairness. We do not always have corporations on both sides that can afford going over a matter twice.

Mr. Williams: As an aside, does not subsection 4 really answer the point that you and I were debating earlier about the preciseness of the original notice or otherwise? Does that not really give the discretion that I thought was inherently vested in the hearing officers, in any event, to broaden the terms of reference of the hearing?

Mr. Poch: That does allow that, but again I think that should not only be on terms and conditions but also on award of costs possibly. I would rather take a longer look at that section. But it would seem to address part of that. I think that there should be some discretion to award costs if that is the case.

Mr. Williams: Yes, I think that is a good point.

Mr. Poch: If we could move on to section 7(3), this deals with the general practice and procedures of the board. To be explicit here, I would ask that this subsection be reworded to read: "Subject to this act and the regulations and subject to the rules of natural justice and the Statutory Powers Procedure Act, a joint board may determine its own practice and procedure."

A number of the tribunals under which acts this joint hearing has constituted itself are subject to the Statutory Powers Procedure Act. It is explicit in legislation and I think that it should be explicit right here in this legislation too.

Hon. Mr. Norton: Is it not also explicit in the Statutory Powers Procedure Act that it would apply to this? That, I know, is the opinion of the draftsmen.

Mr. Poch: I was just thinking it should be right in the section itself. Since a number of the other acts do address the Statutory Powers Procedure Act itself, I think it should be addressed in this act itself, and make it very clear.

If we can move on section 7(4), this is where the joint board may award the costs of a proceeding before the joint board. I would propose the consideration of the allowance of award of costs for part of a proceeding also, not just for the proceeding. A proceeding, to me, would mean a fully completed matter. It is just for greater clarity that the award of costs should also be allowed for part of the proceeding.

Hon. Mr. Norton: I thought that was included in the word "proceeding," that it would imply "or in part thereof."

Mr. Poch: Can we move on please to the infamous section 8(3)? So much has said about this that I will not say too much, except I think this whole subsection should be deleted. I think if anybody wants to be represented as a class to lessen their costs, he will do so. I think that different persons who may be perceived, at the outset or throughout part of a hearing process, to have the same interests and to be affected the same way, may, as more evidence comes out throughout the hearing, not be so affected. So I would just ask that this section be deleted totally.

I understand that Mr. Castrilli will make reference to this section also at a later time. It is up to the parties. They will join if they feel necessary, in all fairness. I think Ms. Macmillan and you both have stated quite a bit about that section. I would request that it be deleted totally.

12:40 p.m.

The board has control over its own procedures under the Statutory Powers Procedure Act, and such intent of that act allows for full right to be heard. There is the right of the board to control a cross-examination and the calling of repetitious evidence.

Hon. Mr. Norton: Actually to abbreviate it, I think we have a draft which we will discuss with the committee on Monday that will resolve that concern.

Mr. Poch: I do think there are adequate safeguards in the board itself in controlling its own procedures without having that provision in there.

On section 10, the expert assistance section, possibly there should be explicit allowance for the board to appoint its own counsel if it so desires. I know that in a number of statutes it does say that. This a very wide provision, and I am pleased to see it, but I think that it should also be tied into a funding mechanism. Each of you, I understand, now has a draft proposal that I set down to paper for a joint board assistance hearing fund, which may be

considered. I understand last night there was an indication, for example, in South Cayuga, certain interveners will be funded by the government. I have not heard the details of that itself at those hearings.

Mr. Kerrio: That is a new deal.

Mr. Poch: Who knows but that this may be institutionalized at other hearings. I do not know. But I would like to see--

Mr. Breithaupt: Certainly it may well be referred to.

Hon. Mr. Norton: There are some people present in the room, whom I recognize, who were aware of that likelihood a couple of weeks ago.

Mr. Poch: In what I have set out on paper, in the provisions I have given you, there is a mechanism which puts some onus on the proponent to contribute to that fund so that the pressures are not on the government and the public at large.

Hon. Mr. Norton: I would note--and I would ask you not to smile when I say this--that it is, if you noticed in the newspaper, the proponent who is actually going to be doing it in the South Cayuga situation with respect to technical support, if I understand the proposal.

Mr. Poch: I am smiling for a few reasons. I would ask that that funding proposal be considered in this act itself. I have seen it nowhere else in our environmental legislation. I think it is time that it be considered. This is the first stage--

Hon. Mr. Norton: Are you suggesting that we make it permissible for the proponent to do that, as we are in the South Cayuga situation? Is that what you are saying?

Mr. Poch: That they be required to contribute to that fund?

Hon. Mr. Norton: It is not a requirement. The issue is that the proponent is doing it. I have endorsed the concept that the proponent might wish to do it in South Cayuga.

Mr. Poch: I see nothing wrong with that.

Hon. Mr. Norton: If that is what you are asking, that we somehow endorse the concept of the proponent assisting, without necessarily making it mandatory, that would be all right.

Mr. Poch: No. The mechanism I propose is that the proponent contribute, and my provisions set that out. But the theme behind the hearing fund is that an intervener, an affected party with an interest, who does not have money but is directly affected, may be able to participate fully and bring out the best evidence at the hearing. That is what my paper, which I submitted, deals with.

Hon. Mr. Norton: I am sure there will be discussion of that by the committee on Monday, after they have had a chance to review it.

Mr. Poch: I am sure there will be. That was the idea behind the submission of that. I must say that the proponent in Mississauga, Domtar, on an environmental hearing themselves did also fund intervention and reports. Mind you, there had been some pressure before. The fact is that no proponent I know of will voluntarily; maybe a government-sponsored proponent or a crown corporation may. The private sector will more than likely not volunteer to help an intervener for the very undertaking they are seeking, when an intervener is in opposition or potential opposition. That is why I would propose the inclusion of the provision I have submitted.

12:40 p.m.

If we could move on to section 11, I would ask that the divisional court in its determination certify its opinion by order and then remit it to the board. There is no requirement for an order of the divisional court in 11(2).

Mr. Williams: Can you repeat that?

Mr. Poch: In section 11(2) I would like to see the divisional court issue an order certifying its opinion and not just remitting its opinion to the board. This is just for guidance to the court and to the board itself and possibly to add strength, as far as the board is concerned, to the opinion of the the divisional court.

Section 12(1) is the rehearing section. I would ask that this only occur on notice--again, notice by the board or the hearings registrar--to all persons who were at the original hearing, and that the rehearing also be on such terms, conditions and any award of costs that the board deems appropriate in the circumstances. The same goes for section 12(2).

Section 12(3): I would just add one or two words here. For greater clarity, I would ask that the words "whole of the" be inserted before the word "joint" in the second last line so that those members making the decision be required to sit through the whole of the hearing. Throughout the hearing may not mean the whole hearing.

Mr. Breithaupt: Do they have to hear all of the evidence?

Mr. Poch: No, not necessarily. They have a tendency to fall asleep at times. I think if they are present throughout the whole of the hearing, that would suffice.

Mr. Williams: Here, again, the hearing may go on for a couple of months. If a person is away one day, any of the board members, you could be faulting the board and saying he is discharged.

Mr. Poch: I have seen a case where that has happened. In fact, that person, because of an absence of one of day, voluntarily did not take part in the decision-making process at the end in the disposition of that action itself.

Mr. Breithaupt: Is that reasonable?

Mr. Williams: It could happen, but I do not think that would be the normal situation.

Hon. Mr. Norton: My interpretation of "throughout" would mean that if they were absent for a period of time, they would not be present throughout the hearing.

Mr. Poch: Again, we are looking at the court saying what does "throughout" mean. I would think that one day or maybe two hours, if you have a specific witness addressing a very specific important point, might turn a whole hearing. I do not know. I would think that the members who make the decision should be there throughout at all times.

Hon. Mr. Norton: I certainly hope that no member of the board has a bladder infection.

Mr. Poch: I know the situation you are talking about.

Mr. Breithaupt: Even a sore tooth.

Mr. Poch: I am aware of the situation in the Niagara Escarpment Commission right now. That was what brought my eye to this section itself. It should be considered.

Mr. Williams: Again, I think you are straightjacketing the process to a form of unreality. I appreciate that you know of a certain instance which was, I suggest, the exception rather than the rule. Certainly if a member was not there at a very critical part of a hearing, he might be faulted for it to the point where it might have the whole hearing fall on the basis of what transpired under the given circumstances.

Mr. Breithaupt: We will have to talk about this.

Mr. Poch: Yes. I just do not know what the answers are. I am just drawing your attention to that. I do not have any real answer for every circumstance. I am just drawing your attention to that problem. In fact, there may be very important evidence, extremely important evidence, given during the time he is not there and he would only hear it secondhand and he would not have the benefit of judging the credibility or the cross-examination itself of that witness.

12:50 p.m.

Mr. Williams: I assume there would be a transcript of the hearings.

Mr. Poch: A lot of the time credibility itself, I find, does not depend so much on what is in a transcript itself, but it is also how the material is presented and how the witness reacts. I know a lot of decisions have been made on the basis of personality in many courts and many tribunals. It is just my own opinion; that is all.

Mr. Williams: That is why you keep winning, is it?

Mr. Poch: I lose once in a while too, but not too often, thank goodness.

Mr. Renwick: I would hate to see you and John Williams together in court on opposite sides. It would be a great trial.

Mr. Poch: I will have my partner, John Willms, and the court no doubt will have trouble differentiating between counsel.

Moving along, I would ask that there be consideration to a definition of when a hearing commences under this act. I do not know where to put it or where it should be located or how it should be tied in, but just a consideration, because at times there are preliminary hearings, sometimes there are no preliminary hearings, and at times certain evidence is presented at preliminary hearings which may be reheard at a later time. I do not know whether a preliminary hearing is part of a proceeding or part of a hearing itself. So possibly the definition of the commencement of a hearing should be stated.

If you look at section 12(4)(c), which is on my page seven, it says: "any other party to the proceedings who took part in the proceedings before the joint board." I think the wording should include, "any other party or participant." The Environmental Assessment Board now differentiates between parties and participants, so I think that a copy of the decision and the written reasons should go to both parties and participants.

Mr. Williams: It means that every witness who was called in front of the hearings would get a copy of the decision?

Mr. Poch: Not necessarily every.

Mr. Williams: From the way you put it, it would mean that.

Mr. Poch: I think in the end, when there is so much expense already up front, and somebody has taken the time to participate in the hearing, he should have a right to have that decision.

Mr. Williams: Yes, but to extend it that far I think certainly has not been the norm to date, that you would serve witnesses of any court proceeding with a copy of the results.

Mr. Poch: I am not necessarily thinking about witnesses.

Mr. Williams: It is a little extreme again.

Mr. Poch: I am not necessarily thinking about witnesses. Mr. Smith of the Environmental Assessment Board has said that there will be different status given to different persons appearing before the board, not in the capacity of a witness, but in the capacity of an intervener or a participant in the hearing itself, either a party or a participant, depending on the magnitude, I guess, of their interest itself and the directness of their interest to the undertaking. I think, in fairness, when somebody has taken the time, the expense and the effort to go to a hearing, he should also be given the decision.

Also, if they have been there, this extends to the appeal provisions and the right to a rehearing and judicial review. The fact is they do have a copy of that decision, so they do have that right. Those rights can extend to them too. They might not be a party in the sense they might not have the utmost of interest, but they obviously might have--

Mr. Williams: With respect, I do not think I can agree with you on that. That is carrying it to excess.

Mr. Poch: If we could move on to section 13(2), this is the application to the Lieutenant Governor in Council.

In light of the mailing requirements of the decision under this act--and I would ask that any mailing be by registered mail and not just by ordinary mail--I realize the 28-day period was probably set down here because it is the same period we find under the Ontario Municipal Board Act, but I would ask that this 28-day period be extended possibly to add on another week or two. I know that many practitioners have an awful lot of difficulty in getting what is now comparable to an application, a petition under the Ontario Municipal Board Act, within a 28-day period.

I would just ask the consideration that maybe a few weeks be tacked on to that 28-day period. Sometimes the decision may come in the mail a little late. There is a little hedging about whether the party should go to the solicitor to seek advice on whether or not they should appeal to the Lieutenant Governor. Time is running, and by that time a lot of the 28-day period may have flown by. If that time is increased, there will have to be a corresponding amendment under section 13(3).

Mr. Williams: I was just wondering why the arbitrary time period of 28 days was selected. Normally, in most of our statutes where there is a time factor, it is 15 days or 30 days; usually it is rounded out. Why are we talking 28 days here?

Mr. Jackson: It is the same period as in the Ontario Municipal Board Act. It happens to be a round number if you count it in weeks; it is four weeks.

Mr. Williams: And that corresponds with what is in the Ontario Municipal Board Act, I see. I think we had a problem at one time over just saying a month and it was decided it was much better in weeks or days.

22
Mr. Poch: Mr. Chairman, if I may have your guidance, I will be able to finish off my comments no later than 1:15, if it is at all possible to sit until that time.

Mr. Chairman: We have a procedure that if no one recognizes the clock, it keeps running.

Mr. Poch: I do not recognize it.

Mr. Kerrio: If you send down for coffee, we might make it.

Mr. Poch: Sections 13(4) and 13(5): I would request consideration that if there is any change in any of the members on a new hearing, there should be a change of all of the members, just in equity. It is simple. If there is any change to any members on a new hearing, there should be a change of all the members.

Mr. Williams: Would you give us that again?

Mr. Poch: On a new hearing, if any members are changed from those members constituting the original tribunal, if there is going to be any change, it should be a change of all members, not just one or two or three or any number of the original board. In fairness, one member might have an opinion from the first hearing and another might have another opinion, and the establishing authority might choose one of them for one reason or another. I have no reason to believe that might happen, but it just might happen down the road. Whoever the establishing authority might be 10 years from now might choose a certain person with a certain opinion based on the original hearing to sit on the new hearing. I think that any change of any should encompass all members.

Moving to section 14(b), which is where the decision becomes final--and I would tie that in with the application for judicial review under section 15(2)--I would like to see that certain time limits be imposed on making that application and that it be an application for leave to divisional court, comparable to what we have in the Ontario Municipal Board Act already except that there be consideration to the court's trouble with the time itself under that act.

I think Jim Jackson is familiar with many cases that deal with that provision itself. I think that the application for judicial review should be to the divisional court on a leave application and that application to the divisional court should be made within a specific time. That is the problem that arises out of the Ontario Municipal Board Act at this point.

1 p.m.

If that is the case, section 14(b) would have to be amended also just to include the fact that the decision would become final where there is no application for such leave having been made. As I said, I will refer to section 19 at the end. I am nearly there.

Mr. Williams: Just on that last point, you are suggesting that where application is made and the joint board is required to hold a new hearing, the joint board issues its decision following upon the new hearing.

Mr. Poch: What section are you looking at?

Mr. Williams: I am looking at section 14(b) again. Under what circumstances are you suggesting it should be referred to the divisional court?

Mr. Poch: I think that there should possibly be a sub-subsection (iii), after the decision of the divisional court or any new hearing ordered by the divisional court. I cannot think right now what should be in there, but there should be some consideration. Possibly the draftsmen can see what I am trying to get at, the fact that there should be some tie-in, the decision to be final only after disposition by the divisional court on an application for judicial review. I do not think that that is addressed in section 14 as it is right now. The draftsmen would be able to tidy that up.

Section 22(4): As I said earlier, I request consideration that any mailing by mail be by registered mail, just for greater certainty.

Mr. Jackson: It was my suggestion that it not be registered mail because I get registered mail at home and it takes me weeks to get it. Many of the people who are interested in getting the decision are people who work and post offices are open only until 4:30. The last time I got a credit card they had to mail it twice before I could get to the post office.

Mr. Poch: I leave it up to you.

Mr. Breithaupt: Perhaps if it was mailed third class it would get there a lot earlier.

Hon. Mr. Norton: It would just be dropped in the mail slot along with all the other stuff that comes in.

Mr. Poch: I will not have anything to say about section 26, but I think the act could be called a number of things besides the Consolidated Hearings Act by the profession as time goes on.

As was addressed by Ms. Macmillan, the Pits and Quarries Control Act has been deleted from the schedule. Where there is an application now under the Planning Act or the Pits and Quarries Control Act, the hearing is before the OMB. I think that that is fine. But when there is overlap with hearings under the Pits and Quarries Control Act and any other act besides the Planning Act, I think those hearings should fall within the ambit of this act. I think consideration might be given there.

I am thinking of the possibility on account of what Ms. Macmillan was saying. We have a Niagara Escarpment Commission hearing and also a hearing required under the Pits and Quarries

Control Act. Possibly there should be a joint hearing. If there is a hearing required under the Planning Act and the Pits and Quarries Control Act, again the OMB decides and sits; so there would not really be any requirement for consolidation of hearings, I don't think, because you would have the same recommendatory body sitting at that point.

Mr. Jackson: If we added the Pits and Quarries Control Act in the schedule, it would not apply where it was only the Planning Act and the Pits and Quarries Control Act in any case, because section 2 of the act requires that the hearing be by more than one tribunal. Where the OMB has the power to consolidate its own hearings, you do not need this act.

Mr. Poch: Then I would consider it coming under this act.

Mr. Breithaupt: I suggest that it should be included.

Mr. Poch: If we could look jointly at section 19(1)(e), which is the exempting provision, and section 5(3), (4) and (6)--and I will not be specific here; I will just be general in my comments--I think the only time there should be allowance for any avoidance of a hearing is where a statute specifically allows that. I think it is as simple as that.

That is all I will say about the exempting provisions in this act. I think if an exemption is allowed under any of the constituting acts, where hearings are required otherwise, they continued to be allowed under this act, but otherwise, no; that there be no further exemptions allowed under this act than would otherwise have occurred under the separate acts. I do not know what the drafting would be there.

Mr. Jackson: If there were an exemption under 19(1)(e) from this act, then the hearing would take place under its original act because this act would not be prohibiting it. So it would only require a double exemption, one under the initial act and one under this act before there would not be a hearing because of 19(1)(e).

Mr. Poch: I know what 19(1)(e) says. I was just setting out a theme. I agree with your interpretation of that section. That is why I do not want to be specific about the wording. That is just an idea that I have.

One very important point that I would like to draw to your attention, Mr. Minister, and again it is in exemptions, is the fact that all hearings, I understand, required under section 33(a) of the Environmental Protection Act, which is a mandatory provision, have been exempted under the guise of the South Cayuga regulation. Mr. Mulvaney agreed with that in committee earlier this year. He said that it was a drafting error and that there would be a change and there has not been a change. I am just saying that the exemptions themselves--

Mr. Jackson: If I could intervene for a minute, I will explain to you what is happening with respect to that. An amendment to the regulation has been drafted. In the event that

the Ontario Waste Management Corporation Act does not go through before the summer, we are going to be bringing that amendment forth. If the Ontario Waste Management Act does go through this summer, then we will just revoke the original exempting regulation. We are waiting to see what will happen in the next few weeks before we take care of that technicality.

Mr. Poch: If the act does not go through, I would like that point addressed specifically for the sake of every other place in Ontario.

1:10 p.m.

The other matter I would like to raise is the regulation that was handed out by Mr. Jackson yesterday. I can agree with Mr. Jackson setting forth, if he did draft this regulation, what it attempts to do. I think it is very important, and as far as I am concerned, important enough to have right in the legislation, not in a regulation. I realize that Mr. Jackson was thinking that there will be hearings under other acts also, but I hope that the Environmental Assessment Act will be the cornerstone of environmental hearings in the environmental process in the province in the future.

I would ask, further to that, that there be a specific provision in this act, stating that all matters required to be undertaken under provisions of the Environmental Assessment Act, up until the expiration of the period set out in section 7(2) of the Environmental Assessment Act, be completed. That is poor drafting. What I am trying to get at is the fact that I see very specific procedures in those requirements set out in the Environmental Assessment Act.

I would like to see some signal, at least to the government agencies that are involved in the process right now under the Environmental Assessment Act, in this act that they will be required to continue to proceed under the Environmental Assessment Act and file that undertaking in the environmental assessment document and go through the review stages in light of what Mr. Jackson handed out, the fact that the hearing will not be scheduled until a certain time.

I do not know what the wording is. I am just very concerned that there should be a nibbling away at the Environmental Assessment Act process any further than it has been nibbled away in the last six years. I do not know how to set that out, but I think it must be addressed. As a practitioner in the field, I do see a nibbling away, and I would like some indication that there not be any further falling away of the process. Perhaps Mr. Young and Mr. Jackson would have better input than I would in that, and maybe Mr. Castrilli.

If I could summarize at this point, just generally, the bill itself, the theme, is great. I said that at the outset and I continue to say that. I thank the draftsmen and the people in the environmental approvals branch and whoever else took the time to put this together. It is mind-boggling when I finally sat down and went through this act and realized how much time it took. My compliments to them.

I would like to see less ambiguity, as I have stated, fairer notice to all persons that may be involved in the processes of these hearings, and the allowance for award of costs by the board, in the board's opinion. I have asked that that be considered.

I would just remind this committee that Dr. Parrott, in a statement to the municipal liaison committee on June 6, 1979, stated that the rights of those persons affected under the present acts at that time would continue under the new act, and those matters considered under those acts would continue to be considered under this act. I just ask that you keep that in mind. That has been the theme, and I appreciate the theme and I agree with that.

There is one other point that I did not hit upon, but which I think is very important--and this is something that I think will be addressed at the hearings very quickly, if not the very first point--and I do not know why I missed it. The bill does not consider the differences between what constitutes an undertaking in a different act. What I mean is that under the Environmental Protection Act, it is a site-specific application. Under the Environmental Assessment Act, the undertaking deals with any number of locations, any number of proposals, any number of sites, at the outset.

The act does not seem to provide the guidance of what subject matter will be before the joint board. I would ask some sort of provision that where there is a conflict between acts, the highest and broadest requirements, if that is the exact wording, should be stated to apply to this new hearing because there is going to be a problem. I can see it very quickly where you have an official plan amendment hearing under the Planning Act dealing with the specific location, designation of a site, and then at the same time there is a requirement for an environmental assessment hearing under The Environmental Assessment Act. What is going to happen? What is the subject matter?

Mr. Norton and the committee, I thank you for your time in listening to me. I have included in my little handout the penalty provision and the restraining order. The penalty provision itself I address to the requirement of the proponent submitting that notice. It is a procedural statute, apparently, but I think there should be some sort penalty provision attached to the one requirement of the filing of the notice, if that is not done, so that there is itself a little bit of an impetus to a proponent to come within the act.

I do not know if the restraining order itself is really appropriate in this act or not, but I think that just on reflection, and perhaps Mr. Castrilli will have more to say about this same thing, the restraining order itself is a takeoff of from what you find in section 100 of the Environmental Protection Act which allows the minister to seek a restraining order. It is at the discretion of the Minister of the Environment to seek a restraining order for the breach of the contravention of that act itself.

My provision, and I am not sure if should go in this act or not on second thought, itself goes one step further. It allows a person that is affected to also seek a restraining order from the court. I think probably one of the greatest pitfalls in our legislation of environmental legislation right now is that in all of the acts there is not that right. From a practitioner's viewpoint, that is my own opinion on the basis of what my clients have said. They have said, "What can I do?" And then I say, "You can seek a fine. You can go and prosecute for noncompliance with the provision of an environmental statute," granted that the crown will get the award of the fine itself.

You have your civil remedies. You do have your civil remedies but the common wisdom--and I am not so sure it is true; it has not been tested as far as I know in the courts--is that if the right to an injunction or restraining order is given to the minister under legislation itself, it is inferred that right is taken away from the general public. That is my understanding of the way the law sits. I would like some explicit amendment to our environmental statutes allowing the public, the persons who are affected, to have that right. It is a very important right, and perhaps that is my philosophy for the day.

Thank you, Mr. Chairman, committee members, all of you, Mr. Norton and the staff.

Mr. Chairman: Thank you, Mr. Poch.

Mr. Breithaupt: You have been a great assistance to the committee. I think you deserve our thanks in turn for coming together to meet with us on a day's notice and spending all the time you have. I hope that the results are going to be an improvement over the bill. It may be worth while waiting until after we pass the bill before it even goes to the environmental assessment groups with which you are involved and the bar associations. But then we will no doubt have the undertaking from the minister within a year or so to listen to all of those additional amendments which will no doubt flood in upon us from the people who actually have to practise.

1:20 p.m.

Hon. Mr. Norton: I also would like to thank Mr. Poch. I understand he had to work until 4 o'clock in the morning the night before last. I'm glad that you're not billing us overtime.

Mr. Poch: I'm not billing you at all, unfortunately.

The committee adjourned at 1:21 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CONSOLIDATED HEARINGS ACT

MONDAY, JUNE 22, 1981

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
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Renwick, J. A. (Riverdale NDP)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Charlton, B. A. (Hamilton Mountain NDP) for Mr. Swart
Kerrio, V. G. (Niagara Falls L) for Mr. Bradley
Miller, G. I. (Haldimand-Norfolk L) for Mr. Elston

Also taking part:

Williams, J. (Oriole PC)

Clerk: Forsyth, S.

From the Ministry of Environment:

Jackson, M. B., Solicitor, Legal Services Branch
Norton, Hon. K. C., Minister
Young, D. R., Senior Environmental Planner, Environmental
Approvals Branch

Witnesses:

Aarons, M., Researcher, Energy Probe Research Foundation
Leverty, R., Hearing Agent, Coalition on the Niagara Escarpment
Young, J., Member, Algonquin Wildlands League

From the Canadian Environmental Law Association:

Castrilli, J. F., Research Director
Patterson, G., Counsel

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 22, 1981

The committee met at 3:22 p.m. in room No. 151.

CONSOLIDATED HEARINGS ACT
(continued)

Resuming consideration of Bill 89, An Act to provide for the Consolidation of Hearings under certain Acts of the Legislature.

Mr. Chairman: Gentlemen, we have a quorum. May we continue. Mr. Castrilli is starting off today, and Ms. Patterson, the counsel for the Canadian Environmental Law Association, is with Mr. Castrilli. Would you carry on, please?

Mr. Castrilli: Thank you, Mr. Chairman. Before I commence, I would just like to indicate to the committee members present that there are a number of groups that would like an opportunity to appear before this committee to speak to matters arising out of Bill 89, the Consolidated Hearings Act. Some of them are here and may wish to indicate that directly to the committee, although I doubt any of them are ready to make a submission today.

Those groups include: Energy Probe, the Algonquin Wildlands League, Stop Contaminating Our Waterfront--also known as SCOW, the Sierra Club, the Conservation Council of Ontario, the Ontario Federation of Agriculture, Greenpeace and the Federation of Ontario Naturalists.

I have prepared a short statement for the committee members and, with the chairman's indulgence, I will read all or most of it into the record. Where necessary, I will depart briefly from the text when I wish to emphasize a particular point.

The Canadian Environmental Law Association, also known as CELA, is a nonprofit organization established in 1970 to use existing laws to protect the environment and to advocate appropriate environmental laws reforms. Since 1970, CELA has run a law advisory clinic for people with environmental problems and has been engaged in hearings involving solid and liquid waste disposal, land-use planning, pits and quarries, air and water pollution and related matters before the Supreme Court of Ontario, the Environmental Assessment Board, the Environmental Appeal Board, the Ontario Municipal Board and the provincial court, criminal division.

Because of very short notice regarding this bill, we will confine ourselves to overview concerns and several selected specific concerns on a section-by-section basis. With respect to our general or overview concerns, we would like to indicate the following: The Consolidated Hearings bill is based on the premise that consolidation, or streamlining, has advantages and few, if any, drawbacks. This may not necessarily be so. However, if the principle of consolidation is to be made sound, its execution must be excellent if it is not to cause more problems than it solves.

Secondly, the bill appears to be a reversal of previous government commitments to ensure the precedence of the Environmental Assessment Act in streamlining matters under consideration.

Thirdly, the bill fails to address a lengthy list of overdue mechanisms for increasing the ability of the ordinary citizen to be properly involved in matters directly affecting his or her environment.

Fourthly, given the above and given the concerns we have with several sections of the bill, we are dismayed at the speed with which the government has pushed this bill through the Legislature. If this bill is important, then the committee and the public should be given a proper opportunity to consider its ramifications. If the government cares anything for the integrity of the legislative process, it will treat this bill as one deserving of proper public and committee consideration, and not as one meant to beat the speed record for passage through the House.

I would like to elaborate briefly on the three principal overview concerns I have outlined. First, the premise that consolidation is a sound principle with few if any drawbacks may not be as attractive when one examines the record. For example, in 1979, a University of Toronto-Ministry of Environment workshop on environmental assessment in part considered the question of overlap in the Planning Act and the Environmental Assessment Act. Among the suggestions for streamlining the overlapping approvals processes within the province was the creation of a superagency or board to handle all approvals simultaneously.

The concept of a superagency or board, however, was generally rejected by workshop participants, as the overlapping of jurisdiction "may have positive effects by increasing the level of monitoring of any particular project to ensure conditions of approval are indeed met." When you consider that approximately one half of the workshop participants were from the Ontario government, that is a clear signal, we would submit, that one should consider streamlining proposals very carefully--not hastily.

There have also been some practical examples of how tribunal overlap can result in sounder decisions environmentally. In 1976, the Environmental Assessment Board approved the siting of a regional government sludge transfer station under the Environmental Protection Act, despite its being contrary to a local official plan land use bylaw and the region's own planning documents, which designated the area environmentally sensitive.

In that particular case, the board members who heard the evidence rejected the proposal because they felt the evidence showed that the transfer station was better suited for an industrial area. However, an executive or secret session of the full Environmental Assessment Board membership, many of whom had not heard the evidence, changed the ruling and approved the proposal. When the Ontario Municipal Board later heard the matter under the Planning Act, it rejected the region's applications. The reasons included the possible pollution of the domestic water supply, especially when no alternative water sources were available.

I have brought a copy of that case here. The citation is volume seven, Canadian Environmental Law Reports, page 37, 1978. I can leave a copy of that with the committee counsel, if necessary. The name of the case was Regional Municipality of Niagara and the City of Niagara Falls, OMB Decision, 1978.

The example suggests that we should not so easily dismiss the value of a second look. If we are going to have consolidation, we should be very careful to retain the best features of the statutes in the schedule. It is not at all clear that this bill is free from serious problems in this regard.

3:30 p.m.

The second overview concern I mentioned at the outset relates to the question that this bill represents a reversal of previous government commitments regarding the Environmental Assessment Act and the streamlining process. In 1977, the Ministry of the Environment recommended that "in cases where both the Environmental Assessment Act and the Planning Act apply and a hearing is required under the Environmental Assessment Act, no hearing on the same undertaking may be required under the Planning Act and subsequent decisions for actions under the Planning Act must comply with approval under the Environmental Assessment Act." That is a reference to the Environmental Assessment Act and the municipalities document of the Ministry of the Environment, dated 1977, at page 18. Bill 89, however, has no such requirement.

In May 1979, the interministerial committee on solid waste disposal recommended that it was its opinion that the Environmental Assessment Board be given the role of carrying out the comprehensive hearings on solid waste disposal sites. This is a quote, "The committee came to this opinion for the reason that the issues to be considered in the establishment of a solid waste disposal site are more specifically addressed in the legislation from which the Environmental Assessment Board takes its mandate." That is at page 22 of the documents appended to the compendium of material already available to the committee.

In June 1979, Dr. Parrott, then Minister of the Environment, reiterated these views, adding that "by means of an omnibus streamlining bill" seven statutes would be amended to provide that the matters to be considered and the parties to be heard under these acts will be heard, decided upon and subject to cabinet review under the procedures of the Environmental Assessment Act. Dr. Parrott also stated that, "As a matter of policy, hearings with respect to waste disposal sites under the Environmental Assessment Act will be required and not optional." That is from Dr. Parrott's statement to the Legislature in June 1979 at pages four and five.

However, this may not be the case under this bill. Moreover, we have the unfortunate proposal now before the Legislature to exempt Ontario Waste Management Corporation facilities from the Environmental Assessment Act hearing requirements entirely. With the committee's indulgence, I will simply refer you to Bill 90, section 15.

The third overview concern, which I would like to go into in a bit of detail as well, relates to the fact that this bill fails to address certain matters regarding the role of the public. If we could sum them up, they would be listed as follows:

1. The principle of consolidation may be acceptable, but not the way it is currently executed in Bill 89.

2. Bill 89 may adversely affect a few rights to hearings available to citizens under other acts in the schedule. We discuss this in somewhat more detail below.

3. Bill 89 may be internally inconsistent. That is also discussed in greater detail below.

4. Bill 89 fails to give precedence to the Environmental Assessment Act, contrary to previous government promises.

5. Bill 89 fails to resolve potential conflicts between the provisions of various statutes. It does not choose the highest standard of participation and openness among each. As a result we may end up getting the lowest common demoninator.

6. Bill 89 contains no offence sections, thus eliminating citizen opportunities to prosecute for violations of the act.

7. Bill 89 fails to authorize public funding of those otherwise unable to participate in administrative hearings.

8. Bill 89 fails to authorize access to environmental information beyond what is in existing statutes, which, of course, is very little.

9. Bill 89 fails to authorize public participation in regulation making.

10. Bill 89 fails to authorize citizen opportunity to seek restraining orders in the divisional court for those violating various provisions of the acts set out in the schedule or in this act.

11. Bill 89 leaves certain statutes off the schedule, such as the Pits and Quarries Control Act.

12. Bill 89 fails to authorize judicial review where the joint board dispenses with the need for a hearing.

Having said all that, I would like to go over briefly some of the specific concerns we have with the statute on a section by section basis. I am mindful that Mr. Poch on Friday went into painful detail on many of the sections in the act, so I do not propose to go into any great detail on many of the provisions that Mr. Poch dealt with, although I do have some comments that will inevitably overlap to some extent. With your indulgence, I will attempt to be as brief as possible in that regard.

First, section 3(3), application to divisional court, says that any person should be able to seek an order from the divisional court directing a proponent to give the hearings registrar notice. In that regard, I am sure Mr. Poch indicated to you the advisability of deleting the second line of that section, such that it would read, "Upon application by originating notice by any person, the divisional court may order the proponent of the undertaking to give to the hearings registrar the written notice required by subsection 1." Mr. Poch would have given you a proposed amendment, either of that nature or of a similar nature.

Next with respect to sections 5(3)(b) and 5(4)(b), deferrals and decisions without hearings, a reading of these two sections leaves the impression that a matter that can be deferred by the joint board can then result in the joint board directing that the deferred matter be decided without a hearing. This is clearly inconsistent with section 8(1) that deals with the question of parties under existing acts.

The minister, Mr. Norton, on June 17 before this committee at page 1240-1 argues that part of the reason for these petitions is to ensure that a board would not be reviewing minor technical matters such as "brand names of pieces of equipment."

While it might sound inconceivable that one would ever be concerned about "minor details"--in fact, it is very difficult to decide in advance what matters might initially be regarded as minor technical details--it would be thoroughly insupportable to allow a joint board to determine what will and will not be heard at the hearing apart from what is now the case under existing acts in the schedule.

Just to give you an example of the kinds of problems that provision potentially creates, the Environmental Assessment Board recommendation and report in the Maple application of 1978 has some very interesting commentary in its findings about the degree to which it went into the question of the acceptability of certain types of liners proposed for a landfill site in the Maple area. Indeed, there was substantial testimony during the course of that hearing on particular brand names, whether liner X or liner Y would be capable of attenuating leachate and what were the potential effects on ground water quality and quantity. In fact, the concern of the Environmental Assessment Board was such that in its reasons for rejecting both those proposals the board indicated that it was of the opinion that there was inadequate information presented by the applicant in a number of important areas relating to its application, including the long-term reliability of liners.

I would submit that while on the surface it seems a reasonable idea to avoid minor technical details, in fact it is very difficult to determine in advance what is a minor technical detail. In that case, a brand name and what had to be ferreted out in cross-examination about the substance and acceptability of that particular product played a very important role in the assessment tribunal's ultimate recommendations to reject that proposal.

We would submit, therefore, that section 5(4)(b) ought to be deleted from this act. It should not affect existing mandatory provisions of other laws.

With respect to section 7(2), modification of requirements, this should not be used in an attempt to circumvent the Environmental Assessment Act. Mr. Norton has indicated that a regulation under this act could resolve any difficulties. It would be better to place it right in the statute. I believe you had substantial commentary from Mr. Poch on that score on Friday, so I will not repeat his comments.

With respect to section 7(3), practice and procedure, the Statutory Powers Procedure Act should be added to this section to ensure the right to be heard, to have counsel, to have cross-examination and that related matters are ensured. Mr. Poch also went into detail on that and I will not dwell on it further.

With respect to section 7(4), the question of costs, in looking over that section, we have continued to be somewhat uneasy about its implications. We are concerned about the possibilities of costs being awarded to those who can barely afford to be involved in hearings to begin with. In this regard we would like to refer you to a Law Review article that was written by Mr. John Swaigen in the annual survey of Canadian law entitled, "Environmental Law: 1975 to 1980." At page 466 on the question of costs Mr. Swaigen says the following:

"The most serious disincentive to private enforcement of rights is the party and party costs likely to be awarded against an unsuccessful plaintiff in a civil action. However, the lack of funding available to interveners at public hearings of regulatory agencies also discourages public participation and causes the contribution of participants to be much less helpful to the board and less effective than it would be if they could match the legal and scientific expertise available to the proponents of projects."

3:40 p.m.

In a later submission, also by Mr. Swaigen, who was then general counsel to the Canadian Environmental Law Association, in a brief he submitted on our behalf in July 1978 to the civil review procedure revision committee, he submitted the following with respect to costs:

"The civil procedure revision committee should encourage the development of a flexible one-way costs rule in public interest cases in Canada. At present, the courts and those boards and tribunals that have the power to award costs can recognize the public interest in this matter and sometimes do. However, they have no guidelines to follow in so doing and no statutory encouragement or recognition of the need for this in the rules of the Supreme Court or in the rules of procedure governing other courts, boards and tribunals. Tradition does not encourage this practice and, therefore, some formal recognition of these changing public needs is necessary."

He went on to add: "There are precedents for the recognition of the need to balance unequal interests by considering individuals in groups as 'private attorneys general' and protecting them financially. For example, the Ontario Municipal

Board's usual practice is to award no costs, leaving each party to pay his own legal expenses. The board has in the past evolved an unwritten rule, however, that it will not award costs against citizen objectors to development unless they abuse its process and in a very few cases the board has awarded costs in favour of such citizens against developers."

He goes on to note that this one-way costs rule has been used infrequently.

We simply flag that concern because section 7(4) in its baldness, we think, can be used both ways. I think it is clear that the last thing citizen interveners need at this point, particularly since they are not receiving funding from the Ontario government notwithstanding that they are taxpayers, is the possibility of being hit with costs as well.

The next section of concern is section 8(1), parties, and section 8(3), class representatives. Section 8(1) is a good provision, in our opinion, but it is undermined by section 5 and by section 8(3). In our experience at Maple, the Environmental Appeal Board attempted to unfairly combine into one class ratepayers concerned about truck traffic, land owners concerned about ground water contamination and a municipality that supported the project in order to bar multiple cross-examination. At the same time, the board permitted one application to be represented by two law firms for two proponents with double opportunities for cross-examination.

In our experience, a provision like section 8(3) will be unfairly used against citizens' groups. While a similar provision is found in the Environmental Assessment Act, there has been little hearing experience under that act to know whether abuses with respect to a similar section could arise. In our opinion, legitimate board concerns can be covered by the Statutory Powers Procedure Act, particularly, for example, by section 23 which we have here and can read into the record if you like. In our respectful opinion, section 8(3) should be deleted from this act.

The next section is section 19, the question of regulations. This section should require public notice and comment on draft regulations before they become law. Such requirements already exist, for example, in the Occupational Health and Safety Act, 1978, the federal Clean Air Act and many other statutes, particularly at the federal level. The Ontario Commission on Freedom of Information and Individual Privacy in 1980 also recommended, "the adoption of provisions requiring notice and comment opportunities in specific statutes which confer rule-making powers on governmental institutions." That is a quote from Public Government for Private People, volume two, 1980, at page 412. We would submit that this statute contains no opportunities for notice and comment.

Section 19(1)(e), exemption by regulations, in our opinion, reflects some of the worst features of the Environmental Assessment Act and ought to be deleted or severely restricted. Making such a feature applicable, for example, to the Planning Act is bad public policy, in our opinion, and will only further erode public confidence in government.

In conclusion, we would like to note that because of the lack of proper opportunity to review this bill we have merely emphasized some of our overall concerns. The government has been talking about consolidation and streamlining since at least 1977. Surely if it regards the concept as being important, then it has an obligation to provide proper opportunities for public review of Bill 89. That has clearly not been the case to date.

The bill is clearly in need of rewriting to ensure two fundamental concepts, in our opinion: first, that the existing rights to hearings and related matters are not undermined by this bill's provisions; secondly, that the rights of the average citizen to environmental protection are given greater recognition than is currently the case under Ontario's environmental laws.

Just one final note that does not appear in the brief. We have been asked by the Coalition on the Niagara Escarpment--and I believe it was probably indicated to you last week by Ms. Macmillan--that Bill 89 be amended to delete the Niagara Escarpment Planning and Development Act from the schedule because implementation of the Niagara Escarpment plan under that act is yet to be decided, thus making its incorporation under Bill 89, in their opinion, somewhat premature. They had asked us to make that statement again on their behalf.

That concludes my opening comments, Mr. Chairman. Both myself and Ms. Patterson would be prepared to answer any questions the committee members might have.

Mr. Chairman: Thank you. Mr. Minister, do you wish to direct any questions to the persons appearing?

Hon. Mr. Norton: I haven't any extensive ones, Mr. Chairman. I might have some after the members of the committee have questioned, perhaps one or two things I might raise.

Mr. Chairman: Are there members of the committee who have questions or comments to Mr. Castrilli or to Ms. Patterson?

Mr. Renwick: Mr. Chairman, I would ask Mr. Castrilli if he has any comment about the net effect of section 4(4), which says, "The joint board shall be composed of one or more members of either or both of the Environmental Assessment Board and the Ontario Municipal Board," when coupled with the decision-making power of the joint tribunal on section 5(2).

Let me express my concern about it. I do not speak from any special knowledge in these areas at all. The municipal board has been in existence a long time and, presumably, has various traditions and knowledge in its accumulated experience. The Environmental Assessment Board has been in existence but a short time and has had little, if any, background of experience, tradition and use.

As I read this, if the joint board is composed entirely of members from the Ontario Municipal Board and there are matters which relate to a number of areas, one of which is an

environmental area, my concern would be that, with the best will in the world, those members may not be aware of or as concerned about environmental issues as people interested in the tradition of environmental protection.

The second area which concerns me about those two sections is that as I read the decision-making power of the joint board--and let me assume that the three statutes in schedule A are affected--it does not appear to me to require an affirmative decision under each of the statutes, but the joint board can exercise its own overall discretion. I am not certain how that discretion is exercised.

3:50 p.m.

Is it a requirement that they must find that an affirmative action would be given under each of the three statutes before them? Can they say, "Under two of them it is yes, but under the third one it is no; but our overall decision is yes, the project should go forward.?" In other words, is there some kind of a majority operation going on, or is their discretion totally unfettered in the sense that they can come to whatever decision they want to make collectively about the three statutes?

I am not expressing that very well or very succinctly, but I think you understand my concern. I could shorten it by saying I would not be nearly as concerned if, first, there had to be on any joint board members from both the Ontario Municipal Board and the Environmental Assessment Board and, second, if in making any decision, they had to specifically address themselves to each of the statutes that were part of the decision and make an affirmative decision on each and every one of the three statutes. Then that would not bother me very much about their provision. I cannot read that, try as I will, into the decision-making power of the joint board.

Mr. Castrilli: To some extent, we have not looked at the relationship of section 4(4) to section 5(2). We probably can advise you in more detail in writing. My reaction to your comment off the top of my head would be that I am not necessarily concerned about the membership of a combination of the OMB and the Environmental Assessment Board. There is much more potentially to be concerned about in the second part of your question, that is, there is nothing in this act that indicates exactly what is going to be issued by the joint board in terms of affirmative response to the mandate of each of the statutes under which it would be conducting hearings. That is potentially of concern. Beyond that, I do not know the effect of it at this point as the bill has been in front of us only slightly longer than it has been in front of you.

Ms. Patterson: I would anticipate that the joint board would have to make the same type of decision under each of the statutes included in the schedule as a board sitting under those statutes, although I agree it is not terribly clear here. It could be interpreted to mean that they do have to meet all the requirements of the review, with all the requirements of the various statutes and, if they did not, they would not be--

s Mr. Renwick: If I could go back to the first point, I take it then that you do not have any particular concern about the fact that the joint board may be composed solely of members from the Ontario Municipal Board.

Ms. Patterson: No.

Mr. Castrilli: Not necessarily.

Mr. Renwick: Not particularly. On the second point, I take it that there is a lack of clarity, in any event, as to what the decision-making power is.

Mr. Castrilli: I should not be nodding because you cannot record a nod. I will say yes, we agree with you.

Mr. Renwick: Perhaps I could ask the minister this or counsel would advise me. I had, perhaps incorrectly, assumed that the Statutory Powers Procedure Act applied to Bill 89. Am I correct on that?

Hon. Mr. Norton: I believe so, Mr. Renwick. Section 32 of the Statutory Powers Procedure Act reads: "Unless it is expressly provided in any other act that its provisions, regulations, rules or bylaws made under it apply notwithstanding anything in this act, provisions of this act and the rules made under section 33 prevail over the provisions of such other act and other regulations, rules or bylaws made under such other act which conflict therewith."

Mr. Renwick: Ms. Patterson wants to comment.

Mr. Castrilli: Yes.

Ms. Patterson: I do not believe it would necessarily apply because if you had two statutes, such as the Niagara Escarpment Planning and Development Act and the Environmental Protection Act, where only a recommendation was being made, then it is not a decision-making tribunal and the Statutory Powers Procedure Act would not apply unless it is specifically said to apply in all instances where there is a joint board.

Mr. Renwick: What you are saying is that if it is only a recommendation it is not a statutory power decision and, therefore, you do not necessarily get the--

Ms. Patterson: The protections of the Statutory Powers Procedure Act.

Mr. Jackson: This body does not make recommendations; it makes decisions. That is why the wording of a few of the provisions in it are fairly complex. You will notice in section 5(2) "it may make any decision that might be made...by any body or person after the holding of a hearing." In the case of an Environmental Assessment Board hearing, under part 5 of the Environmental Protection Act, the joint board not only conducts the hearing, but it makes the decision that would otherwise be made by the director. I think that problem you mention does not arise.

Mr. Renwick: Mr. Chairman, perhaps I could ask the minister to help me in the first instance, without my making a value judgement, but just simply to understand the joint decision-making power in section 5(2). Let us assume that "the joint board may make a decision that might be made by a tribunal that has a power, right or duty to hold a hearing in respect of which the joint board hearing was held." Let us assume that there were three statutes involved. Does the board have to make a decision under each of those acts? In other words, does the joint board have to make an explicit decision under statute number one, an explicit decision under statute number two and an explicit decision under statute number three? If they do that, then how do they make their overall, final decision with respect to the undertaking that is proposed?

Hon. Mr. Norton: Subject to what counsel may say, I might have inadvertently misled in some of my earlier comments when I said that there would be a single decision rendered. I think that is still the case, except that as within that decision the joint board would have to meet the requirements of decision-making under each of the individual statutes. I do not think they will issue a decision under one act, a decision under another and a decision under a third act.

Mr. Renwick: I understand that.

Hon. Mr. Norton: It will be one decision, but they would clearly, it seems to me, have the responsibility to make their decision in such a way that it met the requirements of each of those individual acts.

Mr. Renwick: Let me assume that they have heard all of the evidence and are engaged in a consideration of their decision, and that there are three statutes involved. Would they have to go through a process of saying, "In our decision-making process, we have, first of all, to assume that we are the board established under statute A and make that decision on the basis of the evidence which is in front of us; assume that we are the board established under the second statute and make that decision; and then under the third statute repeat that process?" In other words, must they isolate themselves from their joint world and look upon themselves as the board established under the particular statute? Having made those--what shall we call them?--first-level decisions about it, they are then required to look at the overall project and make a single final decision. I do not want to put words into your mouth, but I am trying to understand how you think it operates.

4 p.m.

Hon. Mr. Norton: I am not sure that I can say expressly how they might approach it in the process of making the decision, but I think it is clear that in order for there to be an approval, for example, under any act, they would obviously have to address themselves specifically to that. It seems to me if their decision did not address that, then it could be attacked on the grounds that there was not an approval as a result of that decision.

Whether they approach it on a segregated basis or not, they would clearly have to address the requirements of each act and make it a specific acknowledgement in their decision that it met the requirements of that act.

I do not see how, for example, in making an overall decision they could say, "The overall decision is yes, except it was no under the Environmental Assessment Act." Clearly, if it does not meet the requirements of all of the acts, it seems to me it would not be a positive decision. In other words, they might say, "Although it meets the requirements under the Planning Act and under some other statute, it does not meet the requirements so that we can give approval under the Environmental Assessment Act and, therefore, the decision is no." It seems to me there has to be unanimity on the various acts for the decision openly to be yes.

Mr. Kerrio: It could not be two out of three.

Hon. Mr. Norton: No, otherwise they would not have an approval, for example, under the Environmental Assessment Act, it seems to me.

Mr. Renwick: A goodly number of my concerns would not be so strong if I thought that was what this decision-making power was to say.

Hon. Mr. Norton: How else would they get an approval or a specific decision under one of the other acts unless that were the case? It seems to me that if they made a positive decision and yet in their decision specifically indicated it did not meet the requirements under the Environmental Assessment Act, clearly there would not be a positive decision. It would not be in compliance--

Mr. Renwick: However they may short-circuit the system, they would have to say: "Had we been sitting solely as a board under the Environmental Assessment Act, our decision would be such and such. Had we been sitting solely as a board under such and such other act, our decision would be such and such." They would have to have had a full score on all three.

Hon. Mr. Norton: Yes, I would think so. How it might be worded I do not know. It may be like a decision rendered by the court where in succession they address specific issues as they work through their decision. I would assume that is the approach that would be taken.

Mr. Williams: Just on that point, I am wondering whether one can categorically conclude that. It is the appropriate assumption to take on the matter and in most instances that would be the case. But I do not know whether one can say that there will not be a valid situation arise where, for instance, there might be three acts involved.

Let's take the Environmental Assessment Act, the Environmental Protection and the Municipal Act. The joint proceeding may be brought forward to expedite matters, but in so doing it might violate some provision under the Municipal Act as far as the procedures that normally would have to be followed by a

municipality are concerned, but which would be circumvented in order to expedite proceedings, which is what the whole purpose and intent of this legislation is about. You might conceivably have two acts that deal more directly with environmental matters and a third act which deals more with procedural matters and is secondarily or in a peripheral way involved in environmental matters, which could be violated. Therefore, the whole process could be called to task because not all three acts would pass the test of the requirements under that act.

When you see that anchor piece of legislation, the Municipal Act, in there, probably there will be many instances where it may be relied upon as part of the process yet not be as directly involved with environmental issues as the other acts to which we would look for conformity.

Mr. Renwick: That is precisely the point that would concern me. The analogy may not be perfect, but Mr. Castrilli gave us the example of the regional municipality of Niagara in the Niagara Falls case which indicated that the court held it was not acceptable to have an overall view which may have said, "We would not have granted it under one statute, but we would grant it on balance under the others."

In other words, you would be saying that the decision-making power would permit them to overrule that particular case, assuming the analogy fits. Perhaps Mr. Castrilli could help me. Is that an analogous situation?

Mr. Castrilli: That situation involved a hearing first before the Environmental Assessment Board under the terms of the Environmental Protection Act.

Mr. Renwick: So there is statute number one.

Mr. Castrilli: That is statute number one.

The full board--not those who heard the evidence--concluded that it is okay to place a sludge transfer station in an environmentally sensitive area. For the most part, of course, under the Environmental Protection Act they were not looking at the official plan lineage bylaw, though they were in front of that board.

In the second hearing under the Planning Act, the Ontario Municipal Board, looking at essentially the same evidence, determined that the region's own planning documents and also the local official plan and lineage bylaw of the city of Niagara Falls would be violated, particularly in a situation where alternative potable sources of water were not available. They essentially concluded the region should not receive an approval for its applications to rezone and redesignate.

The effect was that one had the OMB taking a stronger environmental position than the Environmental Assessment Board in that particular case. Of course there are other examples that go the other way.

Mr. Renwick: There were conflicting decisions under two statutes.

Ms. Patterson: The end result was no.

Mr. Castrilli: The end result was no approval.

Mr. Renwick: Mr. Williams, I think that would indicate that this joint board can come to some sort of overall discretionary, balanced judgement, regardless of what their decision might be under each of the specific statutes.

Mr. Williams: Yes. I feel that is inevitably going to happen at some point. It is difficult enough sometimes to give interpretation of one statute, but with two or three or four involved the permutations and combinations are so many that it would be very difficult at this time to conclude that one would have to have an affirmative decision on each one of those acts at that time. To make a commitment that that would be the case now, at this stage, may be putting the minister in a straitjacket.

Hon. Mr. Norton: With respect, I have to differ with the interpretation of the member for Oriole in that I think there is nothing in this act which in any way sets aside any of the requirements of the individual acts as to the standard that has to be met in terms of approvals and otherwise.

The specific cases which have been cited and which raised the concern are legitimate. I should be careful what language I use in respect to those specific decisions. There is one other one I think that you are aware of--I do not know whether you mentioned it or not--where something similar occurred. That was the Ajax hearing. In each case there, I think that if there was something offensive in the decision, it resulted perhaps not from the way in which the hearing was held, but the fact that the whole board came to a different conclusion than the panel that heard the evidence.

Section 12(3) says, "No member of a joint board shall participate in a decision of the joint board following upon a joint board hearing unless he was present throughout the joint board hearing and heard the evidence and argument of the parties." That requirement in the act would substantially eliminate, I would hope, the chances of that type of thing happening again. In other words, the panel, however it might be composed in a given situation, would be the joint board that arrived at the decision.

4:10 p.m.

Certainly if anybody can find anything that indicates otherwise, I would be glad to have it pointed out. But I do not think that a joint board would be in compliance with the requirements of the laws of this province if it said, "Well, let's take it on a shot of three out of four or two out of three and we will say yes, in spite of the fact that it does not meet the requirements of the Environmental Assessment Act, or in spite of the fact that the hearing of necessity under the Expropriations Acts did not demonstrate necessity." I just do not think they have the authority to do that.

Mr. Castrilli: I just wanted to say that the purpose of using that example, quite apart from the fact that it happened also to involve a secret session that reversed a ruling of those members of the board who heard the evidence--an unfortunate practice which I hope will cease in the future--was really to indicate that in certain instances two tribunals looking at the same matter came to different conclusions. Actually, in that particular case, two tribunals looking at the same matter came to the same conclusion.

The reason I used that example was to indicate that if we are going to adopt a principle of consolidation, we have to be certain that the best features of the statutes in the schedule are going to be retained. Our submission is, how do you know that if nobody in the province has looked at the bill for less than 72 hours? The burden of our comments was that the principle can only be acceptable if its execution is very good. We have concerns about its execution. We have concerns about its execution and we have listed some of them. That was the burden of that example.

Mr. Kerrio: It appears that in the three submissions that were made before the committee a sort of overriding message was transmitted from all three. There was some disappointment, even in the view of the former Minister of the Environment, now a house builder, given the promise that he was going to--

Hon. Mr. Norton: I am sure it will be environmentally sound.

Mr. Kerrio: I thought it should be. I was wondering if he was going to pass all the acts.

Mr. G. I. Miller: Safe from all hurricanes.

Mr. Kerrio: It appears that there was some commitment there. March 19 having passed and all that transpired aside, I am wondering if there will be some extension of the time frame. The major point I am trying to make is that these presentations, in keeping with a real interest in what we are doing, were well done for the time frame that existed. But the overriding question is that various groups who want to make submissions have given evidence that they have not had enough time.

Are you going to insist on the time frame that has been set? I would really like to hear your comment on that very important question because it seems to be common to everyone who has appeared before us so far.

Hon. Mr. Norton: As I indicated earlier, there are time constraints that we are all living with. When the request was made and I agreed that the bill come to committee, the initial request was for two days. The initial indication from the members of the committee requesting it was that it would be to hear a limited number of submissions from some specific groups. That was what led to the agreement being arrived at among the House leaders of all three parties that it would be reported back to the House tomorrow. I frankly do not see how I can get away from that kind of time limitation at this time.

There are important considerations awaiting the passage of this bill. We can reflect some of the concerns that have been addressed in the course of the clause-by-clause consideration. It may not initially address or resolve all of the concerns. But I can assure you that if it appears that the act, once it is in place, is not operating in an effective way to achieve the objectives of a consolidated hearing and, at the same time, protecting the integrity of individual objectives of the acts which come under it, I would certainly be willing to hear from those people who are working with it, with a view to reconsidering any weaknesses discovered in the course of its initial operation.

I would not pretend to say that we may never discover any weaknesses in the act. We may very well do so. Those who are likely to be working with it would be the first to indicate that. I am certainly not going to be closed to hearing of ways in which it can be improved.

Mr. Charlton: With regard to your comments, can you tell us which specific matters are immediately pending for which you need this legislation? What are they?

Hon. Mr. Norton: As you are probably aware, the municipal projects are coming in under the provisions of the Environmental Assessment Act. One of the conditions the municipalities established for that to occur was that legislation be in place for the consolidation of hearings so that it would not be necessary to have sequential hearings on each of their projects coming under the provisions of the act.

There also is the Hydro distribution in western Ontario. Hydro is anxious to begin its procedures with the public there and anxious to comply with the provisions of the Environmental Assessment Act and to have as efficient an approach as possible to those hearings involving the public.

Any of you who have been on the Hydro committee or any of the other committees dealing with matters relating to the distribution of power in the province will realize how critically important that is to us, especially as it gets to the latter part of this decade. Any significant delay in their being able to know the requirements and what legislation they would proceed under could cause some very lengthy delays at a critical time perhaps in the latter part of this decade.

Mr. Kerrio: May I finish, please?

Mr. Chairman: Yes.

Mr. Kerrio: I will put the question in a slightly different way. We heard evidence that this bill took a great deal of time and effort to prepare. I am wondering whether, concurrent with the development on the government side of such a bill, we would not have been well advised to give notice to those people who have such concerns, not just so they will know what is going on, but to enable them to develop some parallel ideas they would incorporate in such a bill.

Then when the time became very constrained, they would have been in a position to come in and do something meaningful for us. You have staff to do the kind of work which has been done on this, but I, for one, am very interested in what the private sector, as well as the legislative body, has to offer to us as we do these kinds of development. I wonder if in the future it would not be in keeping with good government and good bills to allow those people to work concurrently with us on some of these developments.

Hon. Mr. Norton: I presume that my predecessor's timetable may have been a little different from the one that we are living with today.

Mr. Kerrio: Do you think he knew that he was going to be building a house and that you would be here answering the questions?

Hon. Mr. Norton: What I am referring to is the fact that there was a significant hiatus in the work of the Legislature in the early part of this year, which may well have altered the schedule for matters coming before the Legislature, the opportunity for the committee to hear submission for a longer period of time and so on. Some of the events in our lives, we do not individually control, I am afraid.

4:20 p.m.

Mr. Renwick: I would just like to comment specifically about the bill, not in general principles at all.

My recollection of the debate on second reading was that prior to that time I was anxious that it come out and that we look at it. With the constraints on the time, there was the discussion in which my colleague Mr. Charlton and I participated with our House leader, Mr. Martel, and with the government House leader, Mr. Wells, and with yourself, Mr. Minister. It was agreed that the bill would come out to be reported back by tomorrow--I think Tuesday. I am not a participant in the agreement. That is a House leaders' agreement. It is my understanding that only they could change it.

I recognize the concern which the minister had because that was the concern which our caucus was trying to live with when it made its decision with respect to the support for the bill, with our desire to get it out to get some things clarified in this short time.

Assuming that you would be satisfied to have the bill in place by--I do not know--September 1 or October 1, would it be possible to at least make some kind of a compromise arrangement so that the regulations under this bill could be a matter of public discussion? Most of the discussion about the regulations would probably bring to light most of the concerns the various organizations would have about the bill and, in the light of those matters, permit you to know of all their concerns and also to make a decision to have the regulations pass then after the hearing had been held. The act would have been passed and it would be in your judgement and discretion as to whether it came back before the assembly because of some changes that you felt were appropriate.

I am only suggesting that as one possibility. It is a point which CELA has put before us in its brief. It would not be the first time that there has been some public input on the regulation question.

Presumably, you are going to have to have the regulations to meet your timetable establishing the very first of the joint boards to deal with some project. Would it be possible to schedule such a thing? It would in a sense exclude the members of the assembly, but in another sense at least it would be a forum at which the environmental groups and other people could express the deep-seated concerns they have about the shortness of time, which has been expressed again today and has been a common theme through these procedures.

Hon. Mr. Norton: In terms of the time for the passing of the bill, if you are suggesting that we delay that until October--

Mr. Renwick: No, I am not suggesting that. I am suggesting that we go through the process we are going through, report the bill, as has been agreed, back into the House. But looking at the point that Mr. Castrilli raises on page seven on the regulations, would it be possible somehow or other to make arrangements to have the regulations discussed publicly during the summertime in a forum where people could meet with your advisers, review the proposed regulations and get their expressions of concern before you?

If out of that you and your advisers felt that some amendment to the act was necessary, next fall you could bring it in by way of amendment. If not, you would promulgate your regulations and go ahead. We are bound by an agreement of the House leaders, so far as the bill is concerned, and if the bill is passed, you are going to have regulations. Why not let some public input take place on the regulations part of the bill?

Hon. Mr. Norton: I am not sure how you define public forum. If I sound as if I am hedging, I am because I am not sure to what extent the regulations will have to be in place for the initial gearing-up process for the first hearings which will be held under the act. In the absence of them, I am cautious about making a firm commitment to have full-blown committee hearings over the summer, or whatever they are.

Mr. Renwick: No.

Hon. Mr. Norton: But if you are speaking of an informal consultation process, as between our staff and CELA or other interested parties, as the regulations are developed, I would certainly be prepared to agree to that, provided that if there were some urgency even then, we could agree that it would proceed fairly quickly.

Mr. Renwick: You have almost put it into a catch 22 at the moment, because if you do not need the regulations then there is no reason why you cannot have some kind of informal discussion on a public basis so that people will be aware it is going on, can appear and participate.

I was not suggesting anything about a committee sitting this summer at all. I am not absolutely certain, but under the Occupational Health and Safety Act at the present time there are discussions going on about certain standards which must be established by regulation. That certainly is not involving members of the assembly. I do not know whether the minister is involved, but certainly the staff of the Ministry of Labour is involved in those proceedings. I am not thinking of an elaborate proceeding.

It would accomplish two things. One, we could go through the clause by clause, report the bill, the bill could be passed and would be there. To the extent that you do not need regulations for whatever this initial priority project is concerned, there is not a problem. But then there would be an opportunity for your staff to meet with the various organizations that have expressed concern--and there are undoubtedly going to be others--to have some kind of public input on the regulations. The discussion of the regulations may throw up to the surface problems about the bill that have not come to light, but that you might be interested in considering from the point of view of amendment some time.

However, I have gone on at too great a length. It is just a suggestion to try to meet this concern which has been expressed to us.

Mr. Castrilli: If I might respond, I think Mr. Renwick's idea is a good one, as far as it goes. In fact, probably he has had some experience with other members of this committee, or on other committees has had experience with Dr. Parrott's proposal to table the regulations arising out of the spills bill--not this committee but the resources development standing committee.

What he proposed there--mind you, the regulations were expected long before now--was that 60 days before they would go into effect, whether or not they would go into effect after that 60-day period, there would be at some point a tabling of the draft regulations before the resources development standing committee, notice in the Ontario Gazette, a 60-day opportunity to respond in writing and an opportunity to appear before the committee to give oral testimony.

That would cover all the bases all at once. Your technical staff could be here and some of the legislators could be here. It is a process that is used in the Quebec National Assembly rather more frequently than it is used here. It works there and there is no reason why it cannot work here. I welcome Mr. Renwick's suggestion in that regard.

As to the first item, as far as our organization is concerned, I must say if we had our druthers this bill is not a priority, period. Some of the things we have been asking for for 11 years are a priority in comparison to this bill. Quite apart from whatever agreement may have taken place between the House leaders, I indicated at the outset that there are at least eight groups that wish to appear before this committee to give testimony on this bill.

This bill clearly has ramifications far beyond anyone's imagination, probably including that of the committee, especially the drafting of the legislation. Quite apart from whatever agreement might have existed between the House leaders, this bill ought to remain in this committee for the rest of the summer and not be discussed again until the fall so that there will be at least a 60- to 90-day opportunity to get acquainted with it before we have to deal with it as law.

Hon. Mr. Norton: It is obvious that we all have to struggle with the issue of priorities, particularly those of us who are elected to the assembly with specific responsibility to try to balance those priorities and at the same time achieve certain objectives that are in the public interest.

4:30 p.m.

I am afraid I cannot agree to the last request, nor could I agree to anything as formal as the request that you made prior to that. I will certainly try to establish some informal opportunity for some input at the time the regulations are being drafted, but beyond that I am really not in a position to make any commitment at this time.

Mr. Kerrio: I want it to go on the record that I was trying to establish this very precisely because I think it may have a little bit of influence on how these proceedings go through. If there had been some agreement reached, there may have been a different involvement with the clause by clause. I was anxious that you make that statement at this time so that we know where to go from here to meet with the agreement that was made. I, for one, have to say there is a great deal more to this bill than I had anticipated when the agreement was made that has since come to light.

Ms. Patterson: I have a couple of proposed amendments if we are getting to the stage where we may not have further ability to comment.

Mr. Chairman: Do you have copies of them?

Ms. Patterson: No. I have just written them out here.

Mr. Chairman: Perhaps, as we did on Friday with Mr. Poch, we could deal with those fairly briefly. We are expecting a bell at any time.

Ms. Patterson: Section 5(4)(b), which is one of our major concerns, gives the joint board the power to direct that a matter or part deferred be decided without a hearing. We are very concerned that that will allow the joint board to dispense with a hearing at whim.

I would suggest that at the point where the semicolon now stands there be additional wording added which would say "if a hearing would not be required or would be dispensed with under the act specified in the schedule or prescribed by the regulations that, but for this act, would apply in respect of the undertaking."

I also would like to add to section 19(1)(e), which we feel would allow for substantial abuse, given the correct context. I know the purported reason for this section and one interpretation would make it quite innocuous, but I would say that if you interpreted this act to mean that anything that came in under sections 2 and 3 had to be dealt with under this act unless it was voluntarily withdrawn, this particular provision would allow for additional exemptions under acts that would not otherwise provide for exemptions.

After "exempting any undertaking or class of undertakings or any hearing or class of hearings from the application of this act or the regulations or any portion or section of this act or the regulations, and prescribing conditions that shall apply to any such exemption," I would like to add, "in which case the undertaking or hearing procedure should be dealt with under the act specified in the schedule or prescribed by the regulations that, but for this act, would apply in respect of the undertaking." This would make it doubly clear, in case there is any problem with the interpretation, that if it is exempted under this act it reverts back to the acts which originally contemplated the hearing.

That last one was not drafted particularly well but I think you get my intention.

Hon. Mr. Norton: It was the intention the draftsman had when he drafted the bill. They maintain that is what it means.

Ms. Patterson: Yes, I know, but I would like to have it clarified.

Mr. Castrilli: We have some other interpretations of what could happen under that, unfortunately, because the statute is drafted so vaguely. Practically anybody's interpretation of that section in relation to sections 5(3) and 5(4) would be that a matter deferred under section 5(3)(b) by the board itself, such that no hearing could take place under any of those other statutes in the schedule, could then by regulation be prevented from having a hearing under this statute. That would mean either that you have a bottleneck somewhere or a decision with no hearing, in other words, an automatic amending of statutes that currently have mandatory hearing provisions.

There are other interpretations of the relationship of that subsection in section 19 to the provisions of section 5 that are probably equally true, given the vagueness of the wording. I think that is something, as a minister of the crown, you have to guard against. You clearly want a statute that consolidates; you do not want a statute that emasculates. It is not clear you do not have a little bit of both.

Mr. Chairman: Does the committee wish to hear from any of the other organizations that are present with us today and that were referred to, keeping in mind the time constraints of reporting this bill back tomorrow?

Mr. G. I. Miller: Should they not have the opportunity of making their representations when they are already here?

Mr. Chairman: That is up to the committee entirely, Mr. Miller.

Mr. Mitchell: Mr. Chairman, we did agree when this item was passed to us that certain groups that were delineated by the other two parties would be heard. I do not really have any objection personally to hearing some of the people who are here today, provided that in the after-supper session which has been scheduled we still get into the clause by clause so that we are finished tonight. That is of the utmost importance. I would like to hear the minister's comments in that regard.

Mr. Chairman: It is a good guess as to how long the clause by clause will take. As Mr. Castrilli mentioned, Mr. Poch went into virtually every clause, section and subsection in the act. In deference to the people who are here, could we hear from them? Regardless of your personal feelings, please keep it as brief as you can; otherwise we will have to cut it off. It is going to have to happen if people will not adhere to, say, a 10-minute presentation. How many groups do we have here, three or four? Three. Could you try to keep yourselves to 15 minutes at the maximum? Otherwise, we will end up cutting off the last group of people who undoubtedly then will not get to be heard at all. Would someone like to go ahead and do try to keep it as short as you can, keeping in mind that no one in this room has set the time constraints on the committee.

Mr. Mitchell: Are we agreed--and I believe that was the gist of the motion--that with the added sittings today we would deal with this clause by clause and finish this this evening? Is that correct?

Mr. Chairman: This evening, and it must be reported back some time tomorrow.

Mr. Mitchell: As long as we understand that.

Mr. Chairman: We only have the permission of the House at this point to meet this afternoon and this evening. Tomorrow has not been established.

Mr. Renwick: We ought to have 10:30 tonight as our target.

Mr. Chairman: The minister has pointed out to me that the reports stage tomorrow afternoon would be the normal time to report this back unless there were special provision given, which is not contemplated at this point. I presume, therefore, the report has to be made up over night. We have this evening to do it.

Is it the consensus that we hear from these people briefly and go with clause to clause tonight? Right. Would you identify what organization you are with first and give your name?

Ms. Aarons: I am Marilyn Aarons, Energy Probe Research Foundation. I will briefly say that we feel that Bill 89 is of such importance that there should be a requirement of hearings and, secondly, we support CELA's amendments and we hope you will give them proper consideration. That is all.

4:40 p.m.

Mr. Chairman: The next organization or group or person who might wish to make presentations. Again, your name and the organization, if you would, please.

Mr. Leverty: My name is Robert Leverty. I would just like to put on record for Ms. Macmillan that I am the hearing agent for the Coalition on the Niagara Escarpment. The time constraints on us have been somewhat difficult, but I have contacted on the weekend with Ms. Macmillan our board of directors, the Federation of Ontario Naturalists, the Canadian Environmental Law Association, the Sierra Club of Ontario, the Canadian Nature Federation, the Foundation for Aggregate Studies and the Federation of Hiking and Trail Associations. I was unable to contact the Soil Conservation Society of America, but I was able to talk to the National and Provincial Parks Association of Canada.

The coalition has been working for the past 14 months at the public hearings on the Niagara Escarpment. All our member groups are very supportive of the government's legislation passed in 1973, the Niagara Escarpment Planning and Development Act. We would just like to put on record that in support of the government hundreds of organizations and land owners have come out in the past 14 months to support the government. I think you may well realize that it is very hard to support the government in its proposed plans sometimes; it is more difficult to come out in support than to just criticize.

We feel that a crucial part--and this came out with our board members--was that a lot of our groups have discussed the appeal process in their recommendations and we do feel that including the Niagara Escarpment Planning and Development Act in this schedule would be premature in terms of the three Ontario Municipal Board hearing officers who listened to all the briefs. The public hearings will be going on for another five months. More groups have to make presentations. All our board members support Ms. Macmillan's position and the amendment that Ms. Patterson put forward today that the Niagara Escarpment Planning and Development Act be excluded from this legislation. We feel it keeps all our options open in terms of the hearing officers and the recommendations they will make to cabinet.

I think that is the response of our board of directors who represent close to 90,000 people. It was difficult to contact the board of directors on such short notice, but they do support our position with regard to Bill 89.

Mr. Renwick: I just do not understand that submission about excluding the Niagara Escarpment Planning and Development Act in light of section 24. Any present hearings are not affected by this bill. That is my understanding.

Mr. Leverty: The Niagara Escarpment public hearings are hearing submissions on the future hearing process for the Niagara Escarpment, what kind of appeal procedures there will be, and many of the groups have come up with innovative suggestions for the future. We think to include this legislation now would be premature to the public hearing process, which is a wider issue. It is hearing groups who are making representations about the future hearing process for the final plan of the Niagara Escarpment. If the government gets the three hearing officers' report on the final Niagara Escarpment plan, the cabinet could always have the option of then including the Niagara Escarpment Planning and Development Act in this legislation.

Many of the groups that we deal with across this province have come out in support of your legislation with regard to the proposed plan, but let us not confuse the issue for these groups that have come out in support of your legislation and your proposed plan.

Mr. Renwick: I take it what you are saying is that the hearing which is presently being held has to deal with the process for the future and does not necessarily deal with any specific hearing which may subsequently be required, and to which the revised process would apply. Is that correct?

Mr. Leverty: Yes. For example, under the Niagara Escarpment plan, there is a development permit. The commission decides whether it will accept the development permit or not. Then it goes to a hearing officer under the Ministry of Housing. At the present moment, a tradition has built up and many very good decisions have been made. We do not think at this moment you should upset that process.

Also, many groups across the province have made submissions on how to improve that process. Maybe there should be a different appeal process. The hearing officers have over the last 14 months and will in the next six months be making their recommendations on that issue. They think this confuses it.

Mr. Renwick: Does that invite a comment from the minister, Mr. Chairman?

Hon. Mr. Norton: I do not see how this act would in any way preclude the kinds of recommendations you anticipate are coming forward. By the same token, if it appeared for a period of that time to make good sense to remove the act from the schedule, it could be done at that time by regulation. I think in the interim if something of importance were to transpire that required consideration under that act as well, we would want it to be a combined or a consolidated hearing. However, when the present process is complete and the future process is clear, it may make sense to take it out of this act.

Mr. Leverty: It is our board's position that it would be better to keep it out at the present moment and go through the process that we have already been going through over the last 14 months and will continue for the next six months. If the government feels, at that stage, that it should be included, I think that is a better route.

In terms of the Niagara Escarpment Commission, I do not think they would have a great deal of time to comment on this. We are concerned about some of the implications and, having been supporters of the escarpment and the plan for so many years, we think it would be unfortunate to rush into any hasty decisions on this. We see the route of keeping it out for the moment, but that when the Ontario cabinet looks at the hearing officers' recommendations on the final plan, then it may be included or maybe another process.

4:50 p.m.

Also, we feel that the Niagara Escarpment Planning and Development Act is a unique piece of legislation. Some of our board members mentioned that it might not be wise to move it into this consolidated act with all these other different ones at the present moment.

I guess what I want to say is that in the last 14 months at the hearings we have met many groups across the province and we are building a lot of goodwill for the future plan. We still have Bruce, Grey and Niagara to finish, and I guess over the years there has been some confusion over the Niagara Escarpment plan which has led to some misunderstandings.

From a public relations point of view as far as we are concerned, on a day-to-day basis, this could confuse some people. Some people may say, "Was it really worth our making all these presentations?" In terms of that public relations point of view, we have done so much good work and we do not want to make it any more confusing for people.

Mr. Chairman: Thank you very much. Perhaps your comments can be dealt with in clause-by-clause consideration.

Mr. Leverty: Thank you again. My board members appreciate the opportunity. We will certainly want to keep the co-operative aspect and goodwill continuing for the next six months in Bruce, Grey and Niagara. We do not want to see anything upset at the present moment.

Mr. Chairman: Is there a representative of another group?

Ms. Young: My name is Jennifer Young and I am representing the Algonquin Wildlands League. I would like to put on record that, due to the short notice of these proceedings, we have not had an opportunity to give consideration to the draft legislation. Therefore, we are not prepared to make submissions today. We would just like to register our concern about the brief notice period and to say that, were we given the time to do so, I am confident that our board would certainly have liked to consider these matters further and bring our considerations to your attention.

Mr. Chairman: Thank you very much, Ms. Young. Are there any other groups or persons wishing to address the committee or make presentations? If there are no other presentations, may we have a brief adjournment, perhaps for five minutes, and then we will start again.

I am sorry, Mr. Williams, you asked to make a comment a couple of minutes ago. My apologies.

Mr. Williams: I have just been concerned about the ramifications implicit in the suggestion made by the gentleman with regard to deleting the Niagara Escarpment Planning and Development Act from the schedule. I think one could say the same thing about the Parkway Belt Planning and Development Act possibly.

As to their positions being prejudiced, regardless of which act you are proceeding under, either one of those two, I am not satisfied that they would be prejudiced by leaving the statutes as part of this proposed legislation, just in the same way that the suggestion to delete the Pits and Quarries Act from this schedule or not to incorporate it in the schedule would leave something to be desired.

If we are going to be dealing with all facets of environmental concerns and legislation related thereto, if we start deleting acts or not incorporating acts that obviously have environmental overtones, then we would be inclined to tear the heart out of this legislation as far as its intent and purpose are concerned. It is an interesting argument that has been made. I guess what I am coming to is that I am not entirely convinced that it would be in the best interest to act upon that particular suggestion. I am not sure it is not a retrograde step to start taking out some of these obviously existing environmental pieces of legislation.

I can appreciate that individuals involved with specific ones in a very ongoing and in-depth way would feel that somehow they might be prejudiced. But I would have to hear further argument to be convinced that way. I am sure all members of the committee may feel the same way, that they are not convinced one way or the other on that point.

I would not want to see us precipitately start removing acts from the schedule without stronger arguments being put, with evidence that they would somehow be prejudiced by existing proceedings under any one of those particular pieces of legislation. Those are the only observations that I wanted to make, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Williams. We will then take a five-minute recess, come back at 5:03 and commence clause-by-clause consideration of the bill.

The committee recessed at 4:58 p.m. and resumed at 5:13 p.m..

On resumption:

Mr. Chairman: Gentlemen, we shall resume at the beginning of the bill, section 1. Are there any comments or amendments to section 1, interpretation? Will section 1 carry?

On section 1:

Mr. Renwick: Just a second. I have no problem with definitions (a), (b) and (c), and no problem, that I can recall, with (d) or (e). But in (f) I had raised the question about that strange thing called the Crown Agency Act and the anomaly in that act with respect to the ancient phrase, "Ontario Hydro-Electric Power Commission." I do not need to repeat it.

My reading of it is simply that the Ontario Hydro-Electric Power Commission is either excluded or that it is ambiguous as to whether it is excluded or not. It is my understanding that it is the Ontario Power Corporation that should be included in the definition of "person." Am I correct?

Hon. Mr. Norton: Our interpretation was that Ontario Hydro, being a corporation, was included because all natural persons and corporations fall within the meaning of "person."

Mr. Renwick: All I am saying is that the Crown Agency Act has a section which says that this does not apply to the Ontario Hydro-Electric Power Commission. I do not want to make a great issue of it, but I think it has to be made clear, one way or the other, as to whether it is included or not.

Hon. Mr. Norton: I don't think there is a conflict there, Mr. Chairman. It would not be--

Mr. Renwick: Would you stand it down and have a look at it?

Hon. Mr. Norton: Apparently counsel have looked at it. Perhaps they could address it.

Mr. Renwick: We will ask them to express it to me. Does it not contain a provision which says that the--

Mr. Jackson: The Crown Agency Act does exclude from the definition of crown agency Ontario Hydro.

Mr. Renwick: Right.

Mr. Jackson: However, being a crown agent is only one possible way to be a person within the meaning of this act. Other possible ways are being a natural person or a public body, and Ontario Hydro is a public body as defined in the Environmental Assessment Act, or by being a corporation, and Ontario Hydro is a corporation.

We are not stating that Ontario Hydro should be here because it is a crown agency or because it is not a crown agency, but there are two other ways that it is included in the definition of "person."

Mr. Renwick: So, you are telling me, unequivocally, that there is no problem. Ontario Hydro is included under item (f).

Mr. Jackson: Yes.

Mr. Renwick: Thank you.

Hon. Mr. Norton: It would have been a gross oversight on our part if it had not been included.

Mr. Renwick: I have no further problem.

Mr. Breithaupt: There were two other points, Mr. Chairman, with respect to the amendments to (f) and (g); those were the questions that Mr. Poch raised concerning including the phrase, "with respect to officers and directors of the corporation."

Has that been considered, and does the minister accept that amendment? If not, what is the explanation for that?

Hon. Mr. Norton: As I understand it, the principal reason Mr. Poch gave for including them is for purposes of prosecuting offences, and since there are no offences under this act, it does not make much sense to include them expressly for that purpose.

If I recall the discussion that we had when he was here, I believe ultimately it resolved itself to his concern that they be subject to any offence provision of the act. Since it is a procedural act, there are at this point, unless the committee collectively determines otherwise, no offences as such under this act.

Mr. Breithaupt: You looked at the case he cited, the United Keno Hill Mines Limited. How did that relate to the suggestion with respect to including this phrase?

Mr. Jackson: That was an interesting case in which the judge of the territorial court of the Yukon, Judge Barry Stuart, gave a lengthy academic dissertation on why corporate officers and directors should be responsible when the corporation committed an offence. Under our statutes, they are responsible if they are parties to and if they participate in the offence directly.

However, if it were decided under any particular act was listed in the schedule or added by regulation that corporate officers and directors should be responsible even if they did not know anything about the commission of the offence, and it was not an act of wilfull blindness on their part, it would be the individual statute in which that responsibility would be appropriately placed.

Mr. Chairman: Are there any other comments with regard to section 1? Is section 1 carried?

Section 1 agreed to.

On section 2:

Mr. Renwick: Mr. Chairman, I have a question. First of all, the minister is reserving the right to add other statutes to the schedule without any reference back to the assembly. Then when you look at section 19(1)(e), you have this immensely broad power of exemption as well. It seems that the minister wants to have it each and every which way.

5:20 p.m.

He can add other statutes to it, but even once he has added a statute to it, any of the ones in the schedule, he can exempt "any undertaking or class of undertakings or any hearing or class of hearings from the application of this act or the regulation or any portion or section of this act or the regulations, and prescribing conditions shall apply to any such exemption."

Is that just legal gobbledegook or is it your intention to play pitch and toss with this act?

Hon. Mr. Norton: It was not my intention to play pitch and toss with this act. My most aggressive athletic days are almost past. Pitch and toss may be about as active as I can get these days.

However, dealing specifically with section 2, surely one would not expect that there would have to be a full-blown amendment to the act in order to add an appropriate piece of legislation to be dealt with under the new procedure, when this is in place; or if an act presently included proved to be unnecessarily included, to exclude it by virtue of a regulation to remove it from the schedule.

I do not see that as a serious encroachment on the authority. Surely that is an authority that exists under a number of other pieces of legislation. It is not a precedent-setting measure or a new departure in terms of the regulating authority.

Mr. Renwick: I am not going to prolong it, because obviously I am not going to get it changed.

Hon. Mr. Norton: We can discuss section 19 when we get to that specifically.

Mr. Renwick: All right. I was just thinking that one of the obvious omissions from the schedule which has been brought out is the Pits and Quarries Act. Is it your intention, if, as and when that pits and quarries bill is passed, that it would come under this act? Or do you intend to leave it to be dealt with entirely under that legislation?

Hon. Mr. Norton: Certainly it was one act that was considered. It was decided, in that instance, to leave it out at the present time and include it later if it seemed to be necessary.

Most of the hearings involving that act at the present time that would involve multiple hearings would be held under the Ontario Municipal Board in any event. Therefore it would be a single board holding the multiple hearings. If it seems to result in cases where it would be desirable to bring it in under this act, then we have left that option open--although the Ministry of Natural Resources was of the opinion that it was not necessary at this time.

Mr. Renwick: I have no further comments on section 2.

Section 2 agreed to.

On section 3:

Mr. Breithaupt: What was your comment there, Mr. Chairman, on the point raised concerning the desire of walking a line that is neither too general in the particular notice, nor overly specific? Has that been resolved in any way, or do you find the wording here as satisfactory as you think can be drawn at this point?

Hon. Mr. Norton: Those who laboured in the drafting of the bill felt that the provisions of section 7, dealing with the filing of documents, would include all of the details that Mr. Poch was concerned about, and that it would be unnecessary to have all of that information which is in the documents spelled out in the notice of undertaking.

Mr. Williams: Is not that as well covered under section 6(4), the amendment of notice by the joint board, if it was felt to be too narrow? We discussed that the other day.

Mr. Jackson: I do not think section 6(4) is particularly important. Section 7(1) is the one that really addresses the issue of finding out the details of what is the subject matter of the joint hearing. It has to be covered in all of those documents under the acts that are being consolidated, which will all be before the joint board.

Mr. Williams: The point that Mr. Poch was making the other day was that if the terms in the notice were too narrow, they might find themselves put in a position of being out of court if they saw a need after proceedings were initiated to expand upon the conditions or the terms under which a joint hearing would be held. This very subsection is to accommodate that type of situation.

Mr. Jackson: Yes, if they had left a statute out entirely, then that would be dealt with under section 6(4).

Hon. Mr. Norton: As far as the detail required in the notice was concerned, it was also felt by the draftsmen, in terms of good drafting style, that it was preferable not to spell all that out in the bill itself, but to do so in terms of form in the regulations, as would normally be done in spelling out the requirements of forms and so on under a bill.

3? Mr. Chairman: Are there any other comments under section

Mr. Williams: There is an amendment I would like to propose. It is a new subsection 4 which may be out of order if there is further comment on either subsections 2 or 3. I want to make an amendment in the way of a subsection 4 that would pertain to 3.

Mr. Renwick: My comment on section 3 was to ask the minister to comment on the submission that was just made to us, as to whether or not the wording is sufficiently broad to permit any person who would otherwise be entitled to be heard at a public hearing to make that application.

Hon. Mr. Norton: My understanding of the discussion we had yesterday with Mr. Poch--

Interjection: Friday.

Hon. Mr. Norton: Sorry, that's right. I worked all weekend so this is like one continuous day--was that he ultimately appeared to agree with the reasons that we gave for the way in which that was worded. As I recall, he referred to--

Mr. Charlton: The reference was made to 8(1).

Hon. Mr. Norton: --the provisions under section 8(1) in terms of who was entitled to be heard. I suggested to him that this being prior to a board even being struck, you could not limit it to those who would be eligible under an act or any combination of acts as to who would have status under those acts, because at that point, one would not necessarily know who those persons would be.

In fact, this is more general in that it suggests that it could be any person who is or may be affected by an undertaking. I think this is broader than under section 8(1).

Mr. Renwick: That is exactly what I was asking. It is your consideration that the words "who is or may be affected by an undertaking" mentioned in subsection 1 is a broad phrase which would encompass all of the kinds of people who would be entitled to be heard if there was going to be a hearing.

Hon. Mr. Norton: I would think so. In fact, I think it would be broader than that in the sense that the persons who might subsequently discover that they would not have specific standing before a hearing would presumably still have the right at this stage to so act.

5:30 p.m.

Mr. Williams: I believe Mr. MacQuarrie wanted to speak to the amendment that I proposed or at least to subsection 3. It may tie in with the amendment.

Mr. Chairman: Mr. Williams moves that section 3 of the bill be amended by adding thereto the following subsection:

(4) Subsection 3 does not apply before a day to be named by proclamation of the Lieutenant Governor.

Mr. Breithaupt: Speaking to that amendment, I would have thought that an amendment like that dealing with a certain proclamation would have been better in section 25, where the commencement of the bill is ordinarily dealt with as it comes into place on royal assent or on a day to be proclaimed. Exemptions to the general proclamation of the bill often go there.

Mr. Williams: Normally that is the case.

Mr. Breithaupt: There is nothing wrong with the other, but it just depends how the committee wishes to deal with it.

Mr. Williams: There were some specific reasons to which the minister would wish to address the matter that suggests it should be in this specific section dealing with divisional court matters.

Hon. Mr. Norton: The relevant reference is section 24, which deals with the transitional period during which the holding of a combined or consolidated hearing would not be mandatory, but would be on the application by the proponent. It is anticipated that following the transitional period, it would perhaps become mandatory in cases of multiple hearings in all instances.

It would not make much sense if the act, as provided under section 24, was not mandatory to, in effect, make it mandatory under section 3 by the initiative of someone else. If the intent is the time that the proclamation under section 24 occurs, then this section would also apply.

Do you understand what I said?

Mr. Breithaupt: I did not think it worked quite that way, but if that is the advice you have, then the knowledge of anyone as to when the act begins, I suppose, will be obtained by a reading of the act concerning a particular subsection.

Mr. MacQuarrie: I am having some trouble, quite frankly, reconciling section 3(3) with subsections 1 and 2. Subsection 1 makes it mandatory for a written notice to be given by a proponent who then indicates what the contents of the notice shall be. Then, all of a sudden, we have this clause appearing that someone can apply to the divisional court for an order directing the proponent to file the written notice.

Surely, if the written notice is not filed or deposited with the hearings registrar, the hearing does not proceed and the undertaking does not proceed. What is the reason for subsection 3? Why is it there?

Hon. Mr. Norton: It is in reading section 3 in conjunction with section 24. When the act becomes compulsory, if someone fails to give written notice to a hearings registrar of a matter that would require multiple hearings, they could be required to by those persons as indicated in subsection 3.

Mr. MacQuarrie: Yes, but under subsection 1, they have to give notice. There is a mandatory provision there.

Mr. Renwick: It is purely to cover the situation where the person does not do what the statute is mandatorily requiring him to do. If a proponent fails to do what he is told to do by subsection 1, then somebody who is affected by his failure should have an opportunity to go to court and have the court order him to do what he otherwise should have done. That is the way I read it.

Mr. MacQuarrie: But then he has the right by another statute to withdraw and notify the hearings registrar that he is withdrawing.

To my mind he has a clearer duty imposed on him by virtue of subsection 1. If subsection 1 as a preliminary to the hearing proper is not complied with, the hearing does not proceed presumably. Surely, the board would satisfy itself that all preliminaries were complied with before the hearing even commenced.

One of the preliminaries is this written notice. I do not really see why it needs to be reinforced by any party or any person who might be interested, having a right to go to the divisional court, because I feel that this is rather an empty sort of section that really accomplishes nothing.

Hon. Mr. Norton: I think it was intended to catch those situations where either through oversight or intent a proponent might proceed under one of the individual acts to have a hearing initiated.

You are correct, that at that stage it would be mandatory for them to proceed under this act, under section 3(1) and file the notice. But it would be a way of requiring them to do it if it became necessary. If it were oversight, then presumably if they became aware that they had overlooked the requirements of this act, they would comply. Otherwise, they could be required by the courts to do so.

Mr. MacQuarrie: In the hearings I have been involved with, certainly the chairman of the hearing and the board in general always satisfies itself that all the preliminaries have been complied with; and we are setting out one of the preliminaries. If they are not complied with, then the hearing is adjourned.

Mr. Renwick: Perhaps I am not certain I understand your concern. I had taken section 3(1) to be the initiating step. Nothing can happen until that step is taken. Rather than to impose a penalty somewhere in the statute for failure to do what should

be done, the alternative provision is made that if somebody thinks you should have done it and you have not done it, they can go to the court to have the matter settled.

But until that initial step is taken, nobody can do anything, as I understand it. The hearings registrar cannot do anything. If the hearings registrar cannot do anything, neither can the establishing authority do anything. That is the way I was reading it.

Hon. Mr. Norton: I do not know if this example is a good one or not but it might be that a proponent overlooked the fact that in addition to the requirements of a particular act, they also had to meet the requirements of applying to a committee of adjustment. If they proceeded on the assumption that a single hearing was all that was required, then it could be brought to their attention. If they did not respond then, all those categories of persons as defined in the act could act to require them apply to the court. That might just be overlooked in the first instance.

Mr. MacQuarrie: I am trying to visualize a situation in which subsection 3 would come into play.

5:40 p.m.

Hon. Mr. Norton: It may not be used. Hopefully, if people are alert, it is not going to be used at all.

Mr. MacQuarrie: I am sort of averse to cluttering up legislation with clauses that would--

Mr. Kerrio: That will ruin the whole process.

Mr. Chairman: Are there any other comments with regard to section 3?

There is the motion to include subsection 4. Is section 3 carried as amended?

Section 3, as amended, agreed to.

On section 4:

Mr. Renwick: On section 4, I do not have anything before subsections 9 and 10.

Mr. Kerrio: On section 4(8), was there not some discussion as it related to joint hearings, where if board members did not participate throughout the hearings there was going to be some determination as to what role they could play in handing down the decision. Do you recall that discussion? I wonder if you would look into that matter?

Mr. Chairman: That is 12(3), the "present throughout" part. There was a discussion on that, "members being present throughout." Is that the one you are referring to?

Yes, that is 12(3).

Mr. Renwick: Mr. Chairman, if you are cleared through to section 4(9).

Mr. Chairman: We have not seen whether it is carried yet. Do you wish me to put that to the committee and then clear it through to that point?

Mr. Renwick: I have no comments on subsections 1 to 8.

Mr. Chairman: Does anyone have any other comments on subsections 1 to 8 of section 4?

Subsections 1 to 8, inclusive, agreed to.

On subsection 9:

Mr. Renwick: My comment is on subsections 9 and 10. It is the identical one. It is the extremely important clause to which the minister has just referred, section 12(3). That is that "No member of a joint board shall participate in the decision of the joint board following upon a joint board hearing, unless he was present throughout the joint board hearing and heard the evidence and the argument of the parties."

It would seem to me to be wisdom to provide in subsection 9 and again in subsection 10 the cross reference to that section, so that subsection 9 would read, "subject to subsection 3 of section 12." And similarly, subsection 10 would read, "subject to subsection 3 of section 12." Because in subsection 9 you are establishing a quorum in the first place and in subsection 10 you are talking about a decision of a majority.

It would seem to me wise that everybody would clearly understand the importance of subsection 3 of section 12. Because as I take it, if a joint board made the mistake of hearing evidence only before a quorum, they would have automatically excluded the members who were absent from the meeting from participating in the decision, because they would not have heard the evidence.

Now there are a lot of things that a board can do with a quorum. One thing it cannot do is to hear evidence or argument unless the full board is there.

Mr. Chairman: I would have thought, following other statutes, that 12(3) is relevant to your comments on perhaps subsection 10 here, but not subsection 9. A quorum present is a quorum and does not relate to the voting.

I would have thought 12(3) was the voting or the participation in the decision and that that would be different to a quorum. The quorum is the number required to constitute a valid meeting.

Mr. Renwick: That is what I was thinking.

Mr. Chairman: I would see it as relevant to subsection 10 but not subsection 9.

Mr. Charlton: We would hope that for the board to make a decision they would first have to constitute a valid meeting.

Mr. Chairman: Yes, and you would have a quorum there. But a quorum would not necessarily be those people who had attended throughout. That would be my understanding.

Mr. Renwick: Let me just try to repeat my point. If, under subsection 9, the joint board made the mistake of holding a meeting at which only a quorum was present, and at that meeting evidence was adduced or arguments were made, then the members of the joint board who were not present would thereby be automatically excluded from participating in the decision.

So it would seem to me that if I were the chairman of a joint board I would want to have it clearly highlighted to me, both in subsections 9 and 10, that I had better be damned careful that I do not hear evidence or listen to argument unless I have everybody there. It is just a flag.

Mr. Chairman: A different way of saying it is that if you had only a quorum at one meeting, and then you had a quorum at the next meeting but there was a switch of one person, you would become incapable of rendering a decision, or entering into a decision. Is that what you are saying?

Mr. Renwick: Let me assume, for the moment, a board of five. Let us assume a majority of three constitutes a quorum. Let me say that the chairman looks at this, says: "Well, we have a quorum present. I am going to now call So-and-so to give evidence before us." As soon as that evidence is taken, members four and five who were not present might as well not be on the board because they cannot participate in the decision.

I just think that it would be important that everybody looking at subsections 9 and 10 will say a quorum for all purposes except hearing evidence or listening to arguments is a majority. But for those purposes they have to have a full complement present.

It is only for the purpose of flagging it that it seems to me that subsections 9 and 10 should have that qualification in front of them. It seems to me to be open and shut that it is important that any member of that board know that he has to be in attendance throughout the time--he does not have to be there when they are dealing with anything else, but he has to be there when they are listening to evidence or adducing argument. That is my only comment.

Mr. Williams: Is there not a distinction to be made here between vacancy and absence? I take the word vacancy to mean of a permanent nature. That if for any reason a person who is appointed to a joint board through circumstance is not able to continue, then that position on the board is declared vacant for the

remainder of the hearings and the board membership is reconstituted as far as determination of a quorum is concerned, as differentiating between that and a member being absent for one sitting of the board.

Mr. Renwick: I was not addressing myself to the vacancy part. I thought the vacancy part is well looked after by simply saying if a vacancy occurs, they can confirm the existence of the--

Mr. Williams: But that is solely what subsection 9 is all about, is it not?

Mr. Renwick: I was not thinking of the question of vacancy. Five members; the chairman calls a meeting; three are present, he has a quorum. He calls for evidence or for argument; you have automatically, without any warning, excluded two members of the board from ever participating again in that hearing.

Mr. Chairman: No, Mr. Renwick, that is where I lose you at that point. I agree with you up to the point you lose members four and five from voting, from taking part in the decision. But I do not see that you lose them from the quorum; I could not follow you past that point.

There are the bells. Let us recess until eight o'clock this evening.

The committee recessed at 5:50 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CONSOLIDATED HEARINGS ACT

MONDAY, JUNE 22, 1981

Evening sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Bradley, J. J. (St. Catharines L)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Piché, R. L. (Cochrane North PC)
Renwick, J. A. (Riverdale NDP)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Charlton, B. A. (Hamilton Mountain NDP) for Mr. Renwick
Kerrio, V. G. (Niagara Falls L) for Mr. Bradley
Miller, G. I. (Haldimand-Norfolk L) for Mr. Elston

Also taking part:

Eves, E. L. (Parry Sound PC)
Harris, M. D. (Nipissing PC)

Clerk: Forsyth, S.

Legislative Counsel: Tucker, A. S.

From the Ministry of Environment:

Jackson, M. B., Solicitor, Legal Services Branch
Norton, Hon. K. C., Minister
Young, D. R., Senior Environmental Planner, Environmental
Approvals Branch

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 22, 1981

The committee met at 8:04 p.m. in room No. 151.

CONSOLIDATED HEARINGS ACT
(concluded)

Resuming consideration of Bill 89, An Act to provide for the Consolidation of Hearings under certain Acts of the Legislature.

Mr. Chairman: May we reconvene at this time. I think when we adjourned this afternoon we were in the middle of section 4(9) and (10). Am I correct? Were we finished with that, gentlemen?

Mr. Charlton: As I recall, did not Mr. Renwick move that we add a reference to each of those subsections 9 and 10, referring those to section 12(3)?

Mr. Chairman: I do not think there was a motion. There was a discussion, but I do not think Mr. Renwick moved it.

Mr. Kerrio: Where is Mr. Renwick? God, you have changed, Mr. Renwick.

Mr. Charlton: I am Mr. Renwick now.

Mr. Swart: Do not make any comments about looking better or worse.

Mr. Charlton: I am ageing rapidly.

Mr. Chairman: I think not. Let us take it, and the clerk substantiates it, that it was not a motion; it was a discussion. So where are we?

Mr. Kerrio: He was accepting the realities of March 19 and hoping you would consider it. That is actually what was said.

Mr. Chairman: I think it was kinder than that. I think he was having trouble convincing the minister of the validity of his argument.

Mr. Swart: Maybe he was getting him to understand it.

Mr. Chairman: Both.

Hon. Mr. Norton: From what I understood I was not opposed to what I thought he was arguing for. It just did not appear to be necessary in the provisions of section 12(3). I am not sure at the end but I thought he was acknowledging that, but maybe not.

Mr. Charlton: Mr. Chairman, perhaps I could comment on my sense of Mr. Renwick's concern and in relation to the minister's comments about it being unnecessary. Although I have yet to attend at length hearings of the Environmental Assessment Board and I have yet to appear at an initial hearing, from my experience with tribunals in this province--and I have appeared at a number--quite frequently the chairmen are not always fully familiar with the matters which are being laid before them. This is not an analogy that relates directly to this act at all.

The minister may have noticed an article in the Globe and Mail two weeks ago about some of the chairmen who operate under the auspices of the assessment review court, which is also a tribunal set up under the legislation in this province. There are some serious problems. For example, I could pass a couple of comments to the minister about one of his hearing boards in the town of Stouffville, not in terms of this particular matter, but of how they were prepared to deal with a thousand of the public in that town almost three weeks ago. It was not their inability to deal with the situation they thought might happen; it was their inability to deal what they did not expect at all. In other words, they did not believe the public was going to show up at this meeting they called and they were totally unprepared to deal with that.

It seems to me that the concern Mr. Renwick was expressing under subsections 9 and 10 here was simply that, assuming a chairman were to recognize a quorum, as we quite often do here, without all of the members of that joint board being present and accept any evidence and/or hear any arguments on the first day of a board hearing, if any members of a board were not then present, there would be absolutely no point in them attending for the rest of the process because they would not be able to be involved in the decision at the end anyway.

Hon. Mr. Norton: I think you are arguing against Mr. Renwick.

Mr. Charlton: No.

Hon. Mr. Norton: It was his wish to include "expressly" in subsections 9 and 10 in reference to 12(3).

Mr. Charlton: A reference to 12(3) is that the chairman of a joint board would not hear any evidence or any arguments in the absence of any members of his board, that he would only hear evidence and/or arguments when all of them were there. That is the whole point, that everybody would be constantly reminded that to call the meeting to order because they had a quorum might not be the appropriate thing to do.

That was his point, I believe, in putting the reference in, to constantly remind people that if they called the meeting to order because they had a quorum as opposed to a full board, they may exempt certain members of that board. We have a process here, for example, where on the first day of hearings of a 10-member board there may be six members present. Under section 4(9) that

constitutes a quorum, but the four members who are missing on day one are not eligible to vote on the final decision. On day two of the hearings there may also be six members present--four from day one and two who were absent on day one--but two who were present on day one are now absent.

Hon. Mr. Norton: I do not think we have to go through all that. I think that is obvious from the act and that is the intent of the act. If the chairman is that stupid, then they have to have another hearing.

Mr. Charlton: All right, but the point is that by the end of the process, while on each day there may be a quorum, by the end of the process it could end up with one or no members of the hearing board eligible to vote on the final decision.

Hon. Mr. Norton: That is correct.

Mr. Charlton: That is why Mr. Renwick raised the concern about cross-referencing those sections so that no meetings would be held without full board attendance.

Hon. Mr. Norton: I still maintain the position that it is unnecessary and probably very bad drafting to do that.

Mr. Mitchell: Surely, Mr. Chairman, the fact that it is drawn to their attention in section 12(3) is more than sufficient to make them well aware of what is required and then the onus is on the members. I am sure that any members who are appointed to this are going to be there for the duration of the sittings.

Mr. Charlton: What happens if they forget about section 12(3) until they get to the decision-making stage?

Mr. Mitchell: I would expect, with all respect, that they would look at the whole act before they start empanelling themselves.

Hon. Mr. Norton: I do not think those who are selected for the board would have trouble reading the legislation.

Mr. MacQuarrie: On this, Mr. Chairman, I would be inclined to say that there is enough elasticity in section 4(9) to permit a hearing to be carried out and to continue. The only thing that troubles me about section 4(9) is the meaning of the word "vacancy." Is that a vacancy on the board by reason of resignation, by reason of illness or by reason of what? Then in the case of a vacancy the board can establish the number of members that constitutes a quorum.

If there are a number of members present--we will take the example already used, six out of the panel of 10--and one falls ill, is that a vacancy? That is not the majority of the board. Is that a vacancy because that one is ill? Then would the board establish five as being a quorum?

Hon. Mr. Norton: I think the intent here is that if there is a vacancy as a result of illness, or disqualification because of bias, or as a result of death, or whatever in the course of hearing, then the establishing authority, in other words the chairmen of the two boards, the chairman of the Ontario Municipal Board and the chairman of the Environmental Assessment Board, could then confirm that vacancy and may then revise the quorum by establishing the number that will constitute a quorum.

In other words, if there were 10 members appointed--I think it would be highly unlikely there would be that many--if there were five members of the board, then three would be a quorum. There might be a vacancy, which would reduce the membership to four. If they confirmed that vacancy, in order to have a majority they might still say that three was a quorum.

Mr. MacQuarrie: The thing is that is not the sort of ordinary meaning of vacancy. In a vacancy in any tribunal, there is a connotation of permanence.

Hon. Mr. Norton: In that instance, if it were just an absence for a period of time, they may decide not to confirm the vacancy, it would seem to me, but that individual who is absent, as opposed to a vacancy having been confirmed, would not be able to participate in the decision. The alternative would be for the board to adjourn until that person were able to return in order to protect or maintain his involvement in the decision-making process.

Mr. MacQuarrie: This would seem to be certainly a logical alternative.

Hon. Mr. Norton: If they proceeded in their absence, they would disqualify the involvement in the decision.

Mr. MacQuarrie: If they proceed in their absence, they are disqualified, of course. I just had trouble with the meaning of the word "vacancy" and what exactly it denoted in the section. The rest of the relationship of section 12(3) to section 4(9) and (10) seems, in my mind at least, to be rather superfluous. Section 12(3) certainly speaks loud and clear and the new sections speak loud and clear.

Hon. Mr. Norton: It is anticipated that a vacancy would be something more than just an absence for a day, in which case the chairman surely would decide whether to proceed to disqualify the person from participating in the hearing or to adjourn the hearing until he returned because, otherwise, they surely would not go back to the establishing authority to confirm a vacancy.

Mr. MacQuarrie: I was under the impression that on tribunals and in courts, vacancies occur by way of death, resignation, permanent incapacity or dismissal and that a person could fall ill and not be able to sit on the panel, but there would not be a vacancy on the panel by that reason.

Hon. Mr. Norton: I think the difference between this and certain other tribunals or courts would be that the life of a joint board presumably would be the duration of the hearing before it, because a joint board would be established in each individual case. I suppose it would not necessarily have to be by virtue of death or even conflict of interest or whatever. They might be disqualified from continuing in that hearing because of conflict of interest, but it may not disqualify them for all time.

Mr. MacQuarrie: If there is sufficient elasticity implicit in the word "vacancy," that is fine--no problem.

Mr. Mitchell: I do not know whether any of the others wish to speak, Mr. Chairman, but this afternoon when we were dealing with section 3, Mr. MacQuarrie felt that one of the paragraphs was superfluous. To add anything further to section 4(9) really is a similar situation in that, to echo the comments of the minister, I think it goes without saying that no one is going to constitute themselves into a board without reading the act they are operating under.

8:20 p.m.

Mr. Chairman: Mr. MacQuarrie, do you wish to make a motion for amendment of section 4(9) and (10) or leave them as they are? Are you satisfied now with the meaning of "vacancy"?

Mr. MacQuarrie: As the minister pointed out, there seems to be a certain elasticity in the way the word is used in this section, particularly in view of the manner in which the joint board is constituted. Varying joint boards can be constituted for a variety of purposes for a variety of periods. I would like to see it clearer but at the same time I can live with it.

Mr. Chairman: Fine.

Mr. Charlton: Mr. Chairman, may I ask through you a question of the minister? Since the quorum procedures set out in section 4(9) are fairly clear and the voting procedures set out in section 12(3) are fairly clear, although it may be unlikely to happen, section 12(3) definitely indicates that one could end up with a hearing board, a joint board, that would have a six-month hearing and at the end of that six months find itself in the situation where nobody on the board was eligible to vote on the decision. Can the minister tell me what would happen in that case?

Hon. Mr. Norton: I would not have any direct authority to do anything, I suppose, but if I did I would certainly recommend to the establishing authority that it did not appoint the same chairman ever again.

Mr. Charlton: I was going to suggest that you would need 12 just to cover that. Theoretically, it could defeat the purpose of this bill altogether.

Hon. Mr. Norton: It is highly unlikely. It is a very hypothetical situation.

Mr. Charlton: Why would we want to leave a situation in legislation where that could happen?

Hon. Mr. Norton: Unless you are proposing a very substantial amendment of some nature, I do not think that simply cross-referencing another section is going to prevent it. If the chairman is not astute enough to avoid that situation on his panel, you can cross-reference it all you like and it is still going to mean the same thing.

Mr. Charlton: We are in a situation here, Mr. Minister, where even if you had people on your joint board who were so totally conscientious and so totally devoted that, excepting illness, they would attend every hearing, in a six-month hearing it is entirely possible that each and every one of the members could run into illness.

Hon. Mr. Norton: The chairman's responsibility surely would be to keep an eye on that sort of thing and, if it were happening, he would have to adjourn the hearing.

Mr. Charlton: So he may end up with a six-month hearing that becomes an 18-month hearing. Some of you are new but some of you have been around long enough to understand my colleague from Riverdale whom I am representing this evening. I suppose the point I am trying to make is that perhaps--

Hon. Mr. Norton: Are you trying to be as convoluted as he sometimes is?

Mr. Charlton: --his comments this afternoon were trying to point out a serious potential problem in the bill as opposed to suggesting a serious amendment and as opposed to just simply cross-referencing the sections.

Mr. Chairman: Mr. Charlton, I had occasion to speak to Mr. Renwick as we were going into the House about this and he was more concerned that section 12(3) be there and that someone who had not been there was not voting on it. That was a major concern as compared with the numerical possibilities that you are concerned with. That is just a comment from having spoken to him. You could solve your problem entirely by just removing section 12(3). That would solve your problem, but I do not think maybe that is what you or the minister want.

Mr. Charlton: The point simply is that we like what section 12(3) proposes. We see some problems in that, though. I do not know just how to solve it. None the less, it is a problem that creates a potential at least for disruption.

Hon. Mr. Norton: I think it is no more a problem than it would be in any other situation where there is a panel, whether it be of judges in an appeal court or any other tribunal, and the rules of natural justice are being followed. It is a hypothetical situation and the possibilities of it occurring are very remote, I think.

Mr. Charlton: Again, that goes back to what Mr. Renwick was suggesting this afternoon about cross-referencing. A better suggestion may be that rather than cross-referencing them, chairmen of joint boards be instructed, either in the bill itself or in the regulations, that on days when one or more members of the board are unable to attend they not then proceed.

Hon Mr. Norton: That would not take into consideration the situation where perhaps in the course of the hearing a single member of the panel might become ill with a long-term illness.

Mr. Charlton: Then the other subsections of that section would take effect, would they not? The chairman would have the ability to declare a vacancy. If somebody comes down with a long-term illness, he is obviously not going to be able to vote in the decision anyway. So it seems more appropriate that, at that point, they declare a vacancy and say that this person will not be involved for the remainder of the hearings.

Hon. Mr. Norton: It seems to me that when you say that the chairman must, if a person is absent for the day, do something--in other words, adjourn the hearing--then you do not leave enough discretion in the hands of the panel.

Mr. Charlton: All right. Again, I was not suggesting exact wording. I was suggesting an approach, and it does not even necessarily have to be dealt with in the bill. It just seems that it was being raised because it was something that was not being discussed very clearly at all. It may be dealt with in the regulations and it may be dealt with in a more flexible way as the minister suggests. The chairman may just be instructed to keep tabs on what is going on and know the appropriate times to say, "We cannot proceed because if I lose one more there will be problems." We wanted to bring the problem to the attention of the committee and the minister because we were unsure of exactly how to deal with it ourselves.

Mr. Piché: Mr. Chairman, would it be in order now to move on? Would you accept that I move section 4(9), (10) and (11) so we can start voting? We seem to have had a lot of discussion and we do not seem to be getting anywhere. I am just wondering if we should not move on.

Mr. Chairman: I can ask the minister to respond. Are you through responding to Mr. Charlton?

Hon. Mr. Norton: I do not think I have any further answering to do at this point.

Mr. Chairman: Are there any other comments or amendments to section 4(9)?

Mr. Kerrio: I just want to raise a question on section 4(10) if I may.

Mr. Piché: You cannot go to 4(10) until we go to 4(9). I will not accept that.

Mr. Kerrio: I bow to your superior involvement.

Mr. Piché: We can move on then. I withdraw 4(10) and 4(11) until the others have had a chance to discuss it.

Mr. Kerrio: I only have one question to raise there. Could there be a minority decision in a situation governing this kind of determination?

Hon. Mr. Norton: Do you mean could a minority opinion be expressed?

Mr. Kerrio: Yes.

Hon. Mr. Norton: There is nothing to preclude that.

Mr. Kerrio: How do we deal with that kind of circumstance?

8:30 p.m.

Hon. Mr. Norton: The majority view would be the decision and the minority view would be a dissenting opinion, the same as in the courts. In the Supreme Court of Canada, for example, you may have a five-four decision.

Mr. Kerrio: Could it end up a stalemate?

Hon. Mr. Norton: No, because then you would not have a majority.

Mr. Piché: A simple majority rules.

Mr. Kerrio: Just a minute now, depending on the circumstance--

Hon. Mr. Norton: You might. If you had an even split somehow or other, then you would not have a decision. It would be like a hung jury, you would have to start all over again.

Mr. Charlton: We talked about that the other day.

Mr. Kerrio: How do we handle that situation? What happens in that case?

Hon. Mr. Norton: Presumably they would have to go back to square one for another hearing.

Mr. Kerrio: That is the very reason I posed the question. If that were to happen, how would you develop the next hearing? Would you eliminate any of the hearing officers?

Hon. Mr. Norton: That would be up to the establishing authority, but I would think in that situation they would appoint a new panel.

Mr. Kerrio: That is exactly what I mean.

Mr. Charlton: Somebody raised that the other day.

Mr. Piché: If it were to be hung, in a sense, if it were to be even, am I right in saying that if a minority situation arose that made sense, that even the majority would consider that and the minority could become the majority then, depending on what the argument was?

Mr. Kerrio: You are thinking about the election now.

Mr. Piché: No, I am saying that it happens many times that when there is a minority discussion, and when it comes to a vote even the majority, if what the minority brought up made sense--it could be turned around if it makes sense. The majority would realize that right away.

Mr. Kerrio: I am concerned if it is hung. Where do we go there?

Hon. Mr. Norton: Normally, I would think a panel would be constituted with an uneven number. But if you were faced with a situation where it started out with an uneven number and one member dropped out--there was a death or a vacancy was declared--they might end up with an even number and could conceivably end up with a split decision. Then I think there would be no decision. They would have to start all over again.

Mr. Kerrio: Do the same people participate? That is what I am asking?

Hon. Mr. Norton: I am advised by counsel that the rules of natural justice would probably require that it be an entirely new panel so as to preclude any bias.

Mr. Kerrio: That is exactly the point that I am trying to make, and I would hope that that would happen.

Mr. Charlton: That point was raised the other day and the concern was that if it was not explicit that in that kind of a situation an entirely new panel be struck, you may end up with a new panel with some old members with a preconceived position.

Hon. Mr. Norton: There have been a number of things raised in our discussions over the last couple of sitting days which I know, when considered by legislative counsel and our ministry counsel, have caused some concern to codify them. In other words, the rules of natural justice would indicate a particular solution.

There is a lot of the law that is not codified, and to try to include all of the law in every statute would mean you would have a piece of legislation that was so complicated perhaps that it would be--you know.

Interjections.

Mr. Chairman: Are there any further comments on section 4(9)?

Subsection 9 agreed to.

On subsection 10:

Mr. Kerrio: One thing I was going to ask you about kind of went by me like an express train. How about time frame as it relates to decisions. Is there any time frame to hand down decisions? Is it considered?

Hon. Mr. Norton: I should think that the time required for a decision would vary depending upon the complexity of the case that was heard.

Mr. Kerrio: I only broached the subject to see whether it was considered.

Hon. Mr. Norton: It may be possible in the procedure; it may be set out in the regulations--not on the decision though. Once a decision is made, there may be certain time frames established.

I think that to try to limit a board in terms of the time that they would have to come to a decision and render it would be artificial. If they were dealing with some very complicated issues involving the Environmental Assessment Act or the Planning Act and several others, it may take them some time to sort out in their minds all the evidence and come to a decision. Other things may be quite simple and straightforward and they may be able to make a decision within a day or two.

Mr. G. I. Miller: (Inaudible).

Hon. Mr. Norton: We would not want them to make a hasty decision on South Cayuga or a place like that, would we, if they were dealing with a matter as complicated as that?

Mr. G. I. Miller: That is a good example. I think we want to make sure we do not get into that.

Mr. Mitchell: I was just going to echo the comments of the minister that I think the fact that time is not specified is really one which probably would be appreciated by those who might be appearing before a joint board. I do not know how it is proposed within the regulations, but I think the minister has indicated the--

Mr. Kerrio: I would hate to think the decision makers were doing what the decision makers are doing with the constitution, and that is taking their tennis racquets and golf clubs and going off to play golf all summer. I thought they should have been a little more responsible.

Mr. Chairman: Are there any further comments or amendments to section 4(10)?

Subsection 10 agreed to.

On subsection 11:

Mr. Breithaupt: Mr. Chairman, on section 4(11) there was a comment made by Mr. Poch with respect to a possible amendment 10(c) reminding us all that on a split decision the proceedings would be null and void. I presume from the minister's comments that it is not really necessary to put that kind of an amendment in because it is quite clear from the operations of boards and commissions that that would automatically be the result.

Does the minister see any need to highlight that and accept that point from Mr. Poch for an amendment? Or are you content to leave it the way it is?

Hon. Mr. Norton: I do not think that it would require further highlighting.

Mr. Breithaupt: I did not think so particularly, but I thought I should raise the point.

Mr. Charlton: There was the other concern raised where I think the discussion took the line of where there is a thin line between minor changes in a proposal and substantive changes in a proposal. The concern was raised about whether or not a hearing should continue when the proponent was suggesting substantial changes in the original proposal which the board was constituted to hear and whether or not, at that point, that hearing should continue or the whole process and renotification should start over.

Hon. Mr. Norton: I think again that is a situation where the board or the panel would be constrained by the fact that if there were substantial change during the course of a hearing in terms of what it was they were in the process of making a decision upon, the courts would probably find it was a decision that ought to be quashed.

In other words, again the rules of natural justice, I suppose, would be what would dictate that. If you announce you are going to hold a hearing on certain issues and you make an unrelated decision or a substantially different decision dealing with other matters, then I do not think it would be a decision that would stand up in the courts at all.

Mr. Charlton: But perhaps through legal counsel you can clarify some of that because obviously the major concern in a situation like that is where a proponent would be trying to substantially change a proposal in the sense of perhaps increasing its scope, as opposed to perhaps substantially reducing its scope. That would probably under normal circumstances be of much less concern.

What would the courts rule in a situation where a proponent in fact halved the size of the original proposal?

8:40 p.m.

Mr. Jackson: It would be a matter of judgement for the joint board and, in turn, if somebody objected to their decision, a matter of judgement for the court. But if the change was so substantial that the court found it was an entirely different thing which was being approved than what had been asked for, I expect the decision would be quashed. If there were changes made during the course of the hearing that were not just by way of elaboration or explanation of details and new issues came up, again, I expect a court would stop the board from proceeding if one of the parties to the hearing claimed that these changes had been sprung on it at the last moment and had not given it ample time by way of adjournment to prepare for it.

Mr. Charlton: Basically, any substantial change would or could render the whole process null and void.

Hon. Mr. Norton: I would assume one thing you would not want to preclude would be if, in the course of the hearing, the proponent made modifications so as to adapt the proposal to the concerns which were expressed by the citizens represented at the hearing; you would not want to preclude that. In those kinds of things there should be some flexibility.

Mr. Charlton: Yes. I think we have dealt with that under the sections where we talked about the board's right to amend. What you are saying is that in legal terms in the case of any substantive change in the scope of a proposal the whole process would have to be started over.

Mr. Jackson: Depending on the nature of the change. Either that or an adjournment would have to be granted in order to allow people to prepare for the change.

Mr. Chairman: Are there any further amendments or discussion on section 4(11)? Shall section 4(11) carry?

Section 4(11) agreed to.

On section 5:

Mr. Kerrio: Section 5(1) notes that the joint board shall appoint a time and place for hearing, but it says nothing about giving notice to the proponents or interveners.

Mr. Jackson: That is right. It does not say anything about that. Section 7(1) provides that all the notices which would have to be given under the individual acts have to be given, except by an order under 7(2). The board might combine them.

Mr. Kerrio: So you are satisfied it is covered under that other section.

Mr. Jackson: Yes.

Mr. Kerrio: That is all I have for 5(1), Mr. Chairman.

Mr. MacQuarrie: This then would cover the notices that are called for in the OMB rules and the publication in the newspapers, or circulation, as the case might be.

Mr. Jackson: Yes. Under section 7(1) all those notices have to be given, except under 7(2), of course. The board can make an order combining them.

Mr. MacQuarrie: Section 5(1) just reinforces my feeling that section 3(3) was sort of superfluous.

Mr. Chairman: Are there any further comments or amendments to section 5(1)? Does section 5(1) carry?

Section 5(1) agreed to.

On section 5(2):

Mr. Charlton: Mr. Chairman, on 5(2), the chair can perhaps instruct me because I do not have a printed amendment and part of the reason is that we would like some direction. We have discussed the intent of what I am going to try to propose here.

Mr. Kerrio: Are we not supposed to have a printed amendment?

Mr. Charlton: I am proposing an amendment. I would propose either that this amendment be added to the existing subsection 2, or that subsection 2 be split into an (a) and (b).

Mr. Chairman: Mr. Charlton moves an amendment to section 5(2) as follows: "The joint board shall not make any overall decision for approval unless the requirements of all of the acts, regulations and government policy covered by the application have been met."

I will fill in the silence. That is back to the discussion this afternoon of three out of four, or two out of three, and so on.

Mr. Charlton: Yes.

Hon. Mr. Norton: I really do believe that would be unnecessary and, in fact, would be repetitive drafting. Surely if it did not meet the requirements under each of the acts and the board did not so find, then they would not have approval. The reason for the combined hearing is that the project requires consideration under each act.

The concern, when it was raised by the delegation this afternoon, as I recall, centred around the concern that under some of the existing individual legislation the boards holding a hearing would not make a decision but make a recommendation. But this particular section makes it clear that under this act they would make a decision under those other pieces of legislation. In other words, they would not make a recommendation to the director in the environmental approvals branch, for instance. The board

would, in this case, make the decision that otherwise under the individual act would be made by the director, after their recommendation was received by him or her. That seemed to resolve their concerns.

Mr. Charlton: If I can just comment on that, because I hear you, Mr. Minister, and I heard you this afternoon and I heard you on Friday as well, there is still some uneasiness. If this is what will happen under the act, then I cannot understand why there would be any objection to specifically saying that, just in order to deal with the uneasiness that happens to be there.

Hon. Mr. Norton: It was certainly my impression, even when the two lawyers were here from the Canadian Environmental Law Association this afternoon, that once that was discussed and it was pointed out that there would be a decision made under each of those, then their concern disappeared.

Mr. Charlton: Again, I would point out to the minister that during the five-minute break we took, which stretched to 10 minutes, and after some second, second thoughts, there was still some uneasiness. It was expressed over here while I was getting a coffee. As I suggest, if the minister is saying to us that what I have proposed in the amendment is exactly what will happen any way, that all of the requirements of all of the acts will have to be satisfied before the board can make a decision, then why can we not say that?

Hon. Mr. Norton: I am not a legislative counsel and we have to hear from them. I am not a draftsman.

Mr. Charlton: I even suggested at the outset that I would accept legislative counsel's advice in terms of the wording of the amendment. I have no objection if they want to reword the sentiment.

Hon. Mr. Norton: They might. We will hear from them. They may even say that by including what you propose it may then cast more doubt upon what was meant in the first instance than if it were left the way it is.

Mr. Charlton: But it would certainly leave no doubt about the future.

Mr. Chairman: Can we deal with that first. Would you like to speak to this point first, Mr. Swart?

Mr. Swart: I want to speak to this motion, yes.

Mr. Chairman: It is not quite a motion yet. It is a discussion.

Mr. Charlton: I moved it.

Mr. Chairman: Did you move that amendment?

Mr. Charlton: Yes. I suggested in so moving that I would be prepared to talk to legal counsel about more appropriate wording.

Hon. Mr. Norton: Would you prefer to hear their opinion on what you have moved?

Mr. Charlton: Sure.

Mr. Chairman: Mr. Swart, do you want to go before that opinion or after it?

Mr. Swart: I would rather hear the opinion first. I will be less likely to make mistakes.

Mr. Chairman: Would the legislative counsel give an opinion?

8:50 p.m.

Mr. Tucker: I do not know whether I can express an opinion, but I am wondering what it means to say that they cannot make a decision until all the requirements under the other acts have been met, without knowing what all those other requirements are. I do not what you are imposing on the joint board.

Mr. Charlton: That is the whole question that is at point here. If you think back to all of the presentations that have been made, the major complaint is that the wording of the bill leaves some questions in people's minds which they would like cleared up. The feeling of a number of the groups is that we should be going to more substantial hearings for more public input, for more comment and more thorough investigation before we pass this bill. The minister has made it very clear that he is not prepared to do that. That leaves some questions in people's minds as well.

Mr. Kerrio: Steamrollered was the word they used.

Mr. Piché: I use that word all the time.

Mr. Charlton: What I am attempting to do with this amendment is to make very clear, regardless of what the original intent was, what will happen once the act is law, even if it would have happened anyway.

Mr. Tucker: Mr. Charlton, what I was suggesting was it gives discretion by saying that.

Mr. Charlton: Are you telling me then that the board may have the discretion to make a decision when the requirements of one of the acts that board is dealing with is not satisfied?

Mr. Tucker: I do not know what you mean precisely by the word "requirements."

Mr. Charlton: That is a word which has been used by the minister and his counsel here on a number of times during the course of these hearings. Perhaps you can get the definition of that from the minister.

Mr. Tucker: They are not necessarily using it in the same context, though.

Mr. Jackson: If a provision such as you are proposing were put in the act, there would be doubt as to whether it meant the procedural requirements, which of course are different--in some cases, even in conflict--in the different acts, and a consistent set of procedures will have to be followed under this act, which is the reason for subsection 2 of section 7. There will have to be an approval under each of the acts under which an approval is required; otherwise the prohibition in the particular act that there is not an approval issued under will still be in place. You do not need approvals unless there is a prohibition.

Mr. Charlton: Give me then some wording that will deal with the substantive issues of the acts in question, as opposed to the procedural issues.

Hon. Mr. Norton: You would have to attach all of the acts as appendices to this one. That is basically what you would have to do.

Mr. Charlton: One of the fears which exists and the sense that is developed here is that nobody is quite sure of all of the ramifications of trying to combine acts that in many instances conflict with each other. Nobody is sure of exactly what will happen and what will override what in whose mind.

Mr. Jackson: They conflict in procedural matters, and this is the procedure that is replacing all those conflicting procedures.

Mr. Kerrio: On a point of order, Mr. Chairman, if I may.

Mr. Chairman: Yes.

Mr. Kerrio: The critic of the Socialist party is making uncommonly good sense, which is uncommon. The point I want to make is we had agreed that we were going to go right through this bill by--

Mr. Chairman: Ten o'clock.

Mr. Kerrio: Ten o'clock.

Interjection: Ten thirty.

Mr. Chairman: Ten thirty. You are correct.

Mr. Kerrio: If we are going to do that, we should have just a little bit of direction. I do not mean this disrespectfully. I just wanted to ask how we were going to do that, get through the bill--

Mr. Charlton: How can you mean it disrespectfully when you said I was making uncommonly good sense?

Mr. Kerrio: --touch on all the subjects and not leave half the bill not even debated.

Mr. Chairman: You are asking me, as Mr. Breaugh says in his expression, to muzzle people? Is that what you are asking me to do?

Mr. Kerrio: Yes, I think so.

Interjection: Mr. Chairman, you are editorializing.

Mr. Chairman: I do not know where we are. Mr. Swart is next and Mr. MacQuarrie and Mr. Mitchell each have something to say. May I hear from Mr. Swart? Perhaps he has a compromise for us here.

Mr. Swart: I would just like to say, first of all to you, Mr. Kerrio, that the Socialist party always makes good sense. That is why your leader wants to come over now.

Mr. Kerrio: Let me qualify that. I said tonight, very exclusively.

Mr. Swart: I want to say that the principle my colleague proposes here in his amendment is sound and, from what I can see, is necessary. I was not here this afternoon to have the advantage of the debate which took place. I was here on Friday when we discussed this same issue.

If I missed something here, I would like to have it pointed out to me by anyone along the front here, minister or counsel. The joint board, in making its decision, must deal with each act as though it were dealing with it separately and making a decision on it separately. It is my understanding that under this joint board they would hear all aspects of this and then would make a decision based on the evidence that was brought forward and weigh it in balance.

Mr. Kerrio: I do not think somebody should come in here and have us go over the ground again--no way. We covered all that ground, when you were out there fooling around doing something else about toilet paper or something. I do not think we should go back over that ground.

Mr. Swart: I happened this afternoon to be in a--

Mr. Kerrio: I do not care. We were here diligently doing our jobs.

Mr. Chairman: Mr. Kerrio, Mr. Swart has the floor.

Mr. Swart: I would have been finished if it had not been for the interruption.

If that is true, that they weigh one in balance with the other and make a decision on that, there will be a decision written by the joint board which will go out to all. If there are three ministries affected, it will go out to all of them. Then that situation is somewhat different to what has been taking place up to this time because each one up to this time would have what amounts to a veto. All of them are going to be weighed in the balance together.

The purpose of the amendment is to maintain that veto as best we can. If it does not meet the general policy of the government--and let me take as an example the white paper on agricultural land--then they would have to take into consideration that aspect of it separately, the environment. Then if it did not meet that, it should not then be approved under the Municipal Act or the Niagara Escarpment Planning and Development Act.

It seems to me that in this principle, unless I have missed something in the discussion this afternoon or something in the act, there is no requirement on the board to give an individual ruling under each section which goes back to that particular ministry. They make one decision, do they not, and if there were three ministries involved it would be circulated to all three ministries?

Hon. Mr. Norton: I think the thing that we have to keep in mind is that this act sets out a procedure under which the requirements of several different acts can be dealt with in a single hearing. It does not in any way relieve the hearing panel from dealing with its responsibilities under each of the individual acts.

In other words, the other acts continue to be the law of this province, whether it be the Environmental Assessment Act or the Planning Act or the Expropriations Act or whatever. All this does is set out a procedure by which they can hold a consolidated hearing, but they still must deal with the law as set out in each of the individual acts. The procedure might vary somewhat, but they still have to deal with the onus that is set out in those acts.

Mr. Charlton: That is exactly what we are trying to deal with.

Hon. Mr. Norton: That is precisely what the act requires. There is nothing in this act that says they can ignore the Environmental Assessment Act or they can ignore anything else.

In fact, I would suggest that it would be an abortive hearing if they did not meet clearly the requirements under each act because what would result is that a proposal brought forward by a proponent would still not have the necessary approvals and whatever else was required to proceed unless it had been found by the board that it met the requirements under each of the acts.

9 p.m.

Mr. Charlton: Let us assume that a board did a hearing under three acts and, in the opinion of the board, all of the laws as laid out in two of those three acts were met and one was--well. They did the two-out-of-three number and, based on the interpretation you have just given us, erred in their ruling by saying that two out of three had been satisfied and, therefore, they were going to give approval to the project. What would a citizen have to go through to have that hearing and the decision of that hearing declared abortive?

Hon. Mr. Norton: I would think it would be a relatively simple procedure in that case because it would be so blatantly short of meeting the requirements of the law.

Mr. Swart: I would like to go back to this because what you say does not allay my fears.

Hon. Mr. Norton: They could not avoid the requirements of the board by saying it met two other acts.

Mr. Swart: I can see that. As you know, most of these boards now are making decisions within the framework of the act, but they have a lot of discretionary power there. Generally speaking, they put an interpretation on those themselves, weighing the various things in balance under one act. There is a lot of discretionary power left there. I am sure if you have been through any hearings you know this.

Because there is this wide measure of discretionary power and interpretation of government policy, which is sometimes as important as the acts themselves, the concern exists that if they weigh one act against the other, there will not be the same protection for the environment, perhaps for the Municipal Act, perhaps for the Niagara Escarpment Planning and Development Act, as there will be if they were considering each one individually because they do have to come up with a composite decision.

I know that is the purpose of this act, but we are trying to put something in here to make it clear that if the general policy regulations and the act itself in one area are not met, then the whole thing should be turned down, rather than weigh in balance one against two, two against one.

Mr. Chairman: The chair is going to use a certain discretion in itself here. I think the minister's position is quite clear on that, so I will relieve him of answering.

Mr. MacQuarrie: Mr. Chairman, I feel we are making haste very slowly. I feel that the amendment as proposed would, in effect, put the joint board in a straitjacket, render it impotent for all practical purposes, and we would end up with a board tied down by looking in every direction for statutory compliance. If they do not comply with the pertinent statutes, adequate remedies and adequate relief certainly exist to anyone who wants to challenge it.

I feel that the amendment really adds nothing to the subsection and all it would serve to do is confuse the legislation to the point that it is incomprehensible.

Mr. Mitchell: I guess, Mr. Chairman, I was going to say basically the same thing as Mr. MacQuarrie. If I understand what Mr. Charlton is saying, before the board makes a decision all conditions of whatever have to be met. But in my understanding of the operation most approvals are predicated on a list of conditions. I do not think a decision is just yes, you can go

ahead, but rather it would delineate certain things to be met, and I think that power already exists in what is being proposed here. Like Mr. MacQuarrie, I think the motion is just going to serve to muddy the whole issue.

Mr. Chairman: I think we had better stop any further discussion on this as either a motion or a proposed motion. At the beginning I was not clear. I suggested it was not a motion; you stated that you had made a motion.

Mr. Charlton: I intended to move an amendment and I thought that is what I said. All I said in terms of trying to clarify that was that I was prepared to listen to alternative wording from counsel in order that it be drafted properly. But I intended it to be an amendment.

Mr. Chairman: Do you wish a vote on this?

Mr. Charlton: Yes.

Mr. Chairman: So it is a motion of some kind. Would you please give the wording to the clerk and we will read it out?

Mr. Charlton moves that the joint board shall not make a decision referred to in subsection 2 unless the substantive requirements of the acts set out in the notice under subsection 3 are complied with in accordance with such acts.

I think there will be no further discussion on this. We must move on. We will put it to the question.

Mr. Swart: Mr. Chairman, I want to move an amendment to that, to add after the word "acts", "regulations and policies," in two places.

Mr. Chairman: Mr. Swart's amendment is that the words "regulations and policies" be added after the word "acts".

Mr. Charlton: I accept that.

Mr. Chairman: You accept the amendment in your motion; therefore, we will vote straight on the motion.

Motion negatived.

Subsection 2 agreed to.

On subsection 3:

Mr. Chairman: Do you want to consider sections 5(3) and 5(4) together because, generally speaking, the same person has spoken to those? You can do it at the same time.

Mr. MacQuarrie: During one of the earlier discussions, the minister and the staff were asked to consider an amendment to section 5(4)(b). I have a copy of it. I wonder if everyone else has a copy and whether that takes care of it. I feel that amendment answers the concerns that were raised. That is all I was going to say about it.

Subsection 3 agreed to.

On subsection 4:

Mr. Chairman: Mr. Swart moves that subsection 4(a) be amended to read as follows:

9:10 p.m.

"(a) The joint board may impose such terms and conditions or give such directions, or both, in respect of the proceedings or the matter or part deferred as the joint board considers proper, but not so as to deprive the right of any person to a hearing or appeal which is provided for under the appropriate acts or regulations."

Mr. Swart: Mr. Chairman, it would seem to me that as it is it gives exceedingly wide power to the board and might very well conflict with the other acts. It gives them almost exclusive power to give directions. If my understanding is right, we should not be depriving anybody of the right to a hearing or to an appeal, if they would have it under those acts.

Mr. Charlton: Give them the wording again. They seem to be unclear about it.

Mr. Swart: It is just to add: "but not so as to deprive the right of any person to a hearing or appeal which is provided for under the appropriate acts or regulations."

Maybe "appropriate" is not the right word there, but I think you know my meaning. I just do not want powers given here to the board to supersede what is in the acts. In the conflict between this and the acts, this probably would supesede because it was passed subsequent to the other one. I have been told that by lawyers in these committees before.

Hon. Mr. Norton: I think that is directly contradictory to another section that is already in the act, Mr. Swart, section 15.

Mr. Swart: Well, maybe we will be amending section 15 too when we get there.

Hon. Mr. Norton: Section 15(lc) says, "No proceedings shall be taken by way of appeal in respect of the hearing or the decision except in accordance with this act."

Mr. Swart: Section 15(1) says, "...a joint board makes a decision in respect of the hearing, subject to section 13." It seems to me what we are talking about here is where a joint board defers a matter of part of a matter under section 5(3). Under the previous section they may defer it to another tribunal and they may give such directions as they deem appropriate. I just want to make sure that there is nothing being taken away from the act. It would seem to me that section 15 deals with a little different matter.

Mr. Chairman, might I explain it? As I read it a little more fully, it seems to me that one could have a joint board sitting which might decide at some point and with justification that they are going to defer a section of this hearing to the Ontario Municipal Board, for instance, or to some other board. Then it says here that if they do this, they "may impose such terms and conditions or give such directions, or both, in respect to the proceedings or the matter or part deferred as the joint board considers proper." I just want to make sure that when they defer that to another board, they are not taking any rights away from a person to have a full hearing.

Mr. Chairman: Mr. Swart, may I clarify a bit? When you say a full hearing, do you mean whatever rights they had under the previous act?

Mr. Swart: That's right. That's exactly what I mean.

Mr. Chairman: If there was a hearing, it is a hearing or whatever, but nothing is deducted.

Mr. Swart: That's right.

Mr. Charlton: He is trying to clarify the wording in section 5(4)(a).

Mr. Chairman: No, he is not trying to clarify; he is trying to--

Mr. Charlton: That reads, "may impose such terms and conditions or give such directions." He does not want that board to have the power to defer with the ability to change the game.

Mr. Chairman: He is attempting to limit rather than clarify.

Mr. Swart: "To conform with the act." That is the right wording.

Mr. Chairman: Mr. Minister, do you wish to pass over that for a moment and give that a little bit of thought and go on?

Hon. Mr. Norton: The concern I would have is that we could end up with a single hearing that ended up being a multiplicity of hearings if we were not careful about that particular amendment.

Mr. Swart: Let me say in answer to that, it is subsections 3 and 4 which give the power to defer it, which means you could have the multiplicity of hearings. All my amendment would do would make sure that there were not any rights taken away with regard to a hearing if it is deferred to another board.

Mr. Charlton: We are not requiring anybody to defer.

Hon. Mr. Norton: We will partly address your hearing--I am not sure we would do so entirely--in an amendment we propose to subsection 4(b), the one that you have before you.

You had me concerned there for a few minutes. I think the subsection that is already there in the act addresses your concern: "Where a matter of part of a matter is deferred under subsection 3 to another joint board..."

Mr. Swart: Another joint board? That's not what I am talking about. I am talking about deferring it to a tribunal or a body. Subsection 5 applies to subsection 3(a), Mr. Minister--

Hon. Mr. Norton: I realize that.

Mr. Swart: --not to subsection 4(a).

Hon. Mr. Norton: Let's come back to that.

Mr. Charlton: Subsection 5 deals with what happens in subsection 3(a). Subsection 5 does not necessarily, as I read it, deal with what happens in subsection 3(b).

Mr. Chairman: Shall we carry on past this and leave the minister. You do have the minister scratching his head. Rather than delay further, can we go on?

Mr. Swart: As long as time does not run out before the end, I will defer it.

Mr. Chairman: Can we pass over section 5(4)(b) because there is a proposed amendment to that?

Mr. Kerrio: Whose amendment is that? The minister's? Can we have a copy of that?

Mr. Charlton: Could I ask the minister a question about section 5(4)(b)?

Mr. Chairman: No, Mr. Charlton. He is already back on a previous section dealing with Mr. Swart's puzzle. Section 5(4a) is Mr. Swart's issue.

Mr. Kerrio: Where is Mr. Swart confused?

Mr. Swart: I am not confused. If you cannot follow things, don't blame anybody else for being confused.

Mr. Kerrio: Oh, I know exactly what is happening now. (inaudible).

Mr. Swart: I know, but you cannot talk about the leadership here.

Mr. Kerrio: Why not? We can talk about leadership anywhere. That is what this game is all about. You cannot, but I can.

Mr. Chairman: Let's leave section 5. May we move to section 6? Does anyone have any comments or amendments to section 6?

Mr. Charlton: It is very difficult to deal with any of these sections that we may have questions about while the minister is still conferring about a section.

Mr. Chairman: I know, but I am trying to get to sections that no one has any comments on.

Hon. Mr. Norton: We do have difficulty hearing, when I speak in my quiet voice, through all the noise that is going on in this room.

Mr. Mitchell: As a matter of procedure, your suggestion might have some value in that you could call the numbers and we can deal with those where there are no comments and revert back. I think that might help us to speed the process a little bit.

Mr. Breithaupt: The problem with that is that you will then pass a section along the way and probably wind up coming back to it anyway because other things may flow from the minister's comments. I think it is probably just as easy to wade through the thing step by step because whatever the minister's decision may be will lead on to the next thing anyway.

9:20 p.m.

Mr. Chairman: Can we take a moment and get a cup of coffee while the minister is dealing with this?

The committee took a short recess.

On resumption:

Mr. Chairman: May we resume, please? The minister is ready to deal with Mr. Swart's issue.

Hon. Mr. Norton: I think we have a solution that will meet your concerns. Just listen for a moment and I will try to work through it. Your concern related primarily to those things which might be deferred under subsection 3(b). Correct?

What I would suggest is that with the amendment that we have proposed to subsection 4(b), this subsection would then read: "The joint board may direct that the matter or part deferred be decided without a hearing if, in the opinion of the joint board, the matter or part is not in controversy"--and that would be determined by hearing the people at the hearing before it is deferred. It would not be deferred without the initial hearing.

If subsection 5 is amended so as to delete the words in the second line "to another joint board," that would then read: "Where a matter or part of a matter is deferred under subsection 3, this act applies with necessary modifications in respect of the matter or part and, for the purpose, the matter or part deferred shall be deemed to be an undertaking mentioned in section 3."

That would then provide for an appeal. It would not provide for an appeal, though, on a matter deferred without a hearing.

That would not be unusual, I should think, because it would not be deferred without a hearing unless it was already as a result of the first hearing deemed not to be in controversy.

What we do not want to have happen, nor do you--and I think this is the principle concern--is that if there is something which may be of a substantive nature, and the parties at the hearing do not agree that it is noncontroversial, then the board, therefore, ought not to defer it without a hearing. But if it is noncontroversial, then surely we do not mean that another hearing has to be held. If we were to make those two amendments, then I think anything that is deferred with a hearing would have a right of appeal to cabinet.

Mr. Swart: I have no objection to that, Mr. Chairman, except for one thing, and this gets into the amendment proposed by the minister, although I assume he cannot move it because he is not a member of this committee and somebody else would have to move it on his behalf when that time comes.

On the word "controversy," I am not just sure how you decide on that. When the notices are sent out, as they will be to all people--and nobody objects to that--does that mean it is not in controversy? If there is a joint hearing and somebody may just send in a general objection, how do we know whether it is, in fact, controversy?

Could the board not refer out something? They are going through their procedures, and here is their particular reason that this should go out to some other board. Could that not be referred out to another body without knowing whether it is in controversy because, at that time, the hearing may not have got to what they are referring out.

9:30 p.m.

I am not sure whether I am making myself clear or not, but I am a little concerned that at a joint board hearing people will object and send in their objection. They do not have to give it in great detail, as you know, because under the Zoning Act they just object to this and it is then sent for the hearing. How do we know whether something is in controversy? I have trouble with that word. I accept the procedure you have worked out except that I am not sure about that word.

Mr. Chairman: Can you enlighten us on this point, Mr. MacQuarrie?

Mr. MacQuarrie: By the deletion of the words "to another joint board" from section 5(5), I do not know what practical effect that has. The minister indicated that the matter could then be appealed. But then you read the last line and a half of the section, "the matter or part deferred shall be deemed to be an undertaking mentioned in section 3," and then section 3 throws you right back into the written notice to the hearings registrar and specifying the general nature of the undertaking, et cetera. A hearing really is implicit in all of that.

Mr. Swart: If I can say a few words again, that is not exactly covering my problem. I basically agree with you. I am talking about the amendment which is being moved which gives the joint board the right to direct that any matter or part deferred be decided without a hearing if, in the opinion of the joint board, the matter or part is not in controversy. That is the part that bothers me, the word "controversy." It may not have been a controversy at that time. But it may be a very controversial matter that some of the objectors want to speak to when it comes to a board.

Mr. Charlton: I would like to make a couple of comments as well, Mr. Chairman. If the minister will think back to some of the comments that were made during presentations, according to what we were told by those who have participated in hearings, there are occasions when the controversy around a particular matter does not become clear until it is more fully discussed in front of the board anyway.

If you will think back to the example that was given this afternoon about liners, once the brand names of liners had been given people went out and investigated the potential and possible flaws with those particular products. Then it became a controversy, as opposed to necessarily being a controversy immediately. It is the word "controversy" that is bothering us, not the intent of what the minister is saying to us.

Mr. Swart: I do not think there is any disagreement here in principle between the minister and myself. It would seem to me that section 8, for instance, makes it rather clear that it is the intent that anything before the joint board have the same right of appeal for hearing. But then this 4(a) certainly qualifies that.

Mr. Chairman: Contrary to what Mr. Breithaupt said, while counsel are dealing with that, is it possible to pass on to any others and carry them on the understanding that if they do come up again we will unanimously open them temporarily?

Mr. Kerrio: Are we going to do all this in the next hour?

Mr. Chairman: Yes, I am hoping so, Mr. Kerrio.

Mr. MacQuarrie: I would like to move to section 6.

Mr. Chairman: Section 6 does have consideration. I wish the other members were here, though. Let us move on to 7. Mr. Breithaupt has comments with regard to 6. Can we move to 7? Does anyone have any amendments or comments with regard to section 7?

On section 7:

Mr. Kerrio: I have a comment on section 7(1). If there are conflicts between the acts listed in the schedule re the filing of notices and documentations, then the less restrictive practice and procedure should be invoked, if we go into 7(1) which deals with a rule of conduct. When I make specific reference to the filing of notices and documentation, then I would hope that the less restrictive practice and procedure would be followed in that section.

Hon. Mr. Norton: Are you talking about subsection 1?

Mr. Kerrio: Mr. Minister, I hope you have noticed that we are not moving amendments. We are hoping that if we put these questions to you, that you are going to consider them and put them in your own way. I think we can save a great deal of time by not going the route of putting them in a form of an amendment and voting them down because the realism is here.

Hon. Mr. Norton: The intention there is to do that. We have--I do not have a copy of it in front of me at the moment--a draft of one part of the regulations. We have undertaken to discuss the regulations with interested parties. It would be our intention to meet that higher standard.

Mr. MacQuarrie: The chairman indicated that there were objections raised in one respect.

Interjections.

Mr. Chairman: Mr. Breithaupt, we have moved to section 7. Do you have any comments with regard to that?

Mr. Breithaupt: I have one small point in section 7. I was more interested in two other items, but if they have been passed--

Mr. Chairman: No, we have skipped to 7. They are still working on 5, and we have deferred 6. Do you have some comments on 7?

Mr. Breithaupt: Under 7 it does seem to give a rather new taxing power to a joint board. I presume that is something the minister has given some consideration to.

Mr. Poch made comments on subsections 3 and 4 with respect to the awarding of costs or a part thereof, and with respect to section 7(3) concerning the rules of natural justice and the Statutory Powers Procedure Act.

I do not really see the need for that second amendment to subsection 3, but the matter with respect to the part award of costs is something that might be worthy of including in an amendment, unless you would presume that the part is included in the ability to award costs in the first place.

Hon. Mr. Norton: I would have thought so, that if they have the power to award costs, it would be at their discretion as to whether it was part costs or in whole.

Mr. Breithaupt: That is all I have in section 7, Mr. Chairman.

Mr. Chairman: Fine. We are then left with Mr. Kerrio's comments about 7(1).

Any other comments, amendments or motions with regard to section 7?

Section 7 agreed to.

On section 6:

Mr. Breithaupt: I have only one point with respect to section 6(4). This provision allows a person other than the proponent to ask the joint board to amend the notice of undertaking.

I am wondering what the basis is for someone to request this amendment. The proponent under 6(3) can only amend it if the notice is incomplete or incorrect. Is this not a different kind of circumstance under 6(4)? Perhaps it is possible that an appellant can convince the joint board to change the general nature of the undertaking, although I would think that would be rather unlikely, which might cause a certain hardship to a proponent.

9:40 p.m.

Hon. Mr. Norton: The two sections differ in that subsection 3 is before the commencement of a joint board hearing. Subsection 4 would be during the hearing. Of course, that would be subject surely to argument by the proponent during the course of the hearing, and the board then could hear the argument on both sides and come to some determination.

Mr. MacQuarrie: It relates really to the contents of the notice as opposed to the undertaking proper.

Mr. Breithaupt: I can see that, yes.

Mr. Kerrio: Before you go ahead that far, Mr. Chairman, I had a comment about 6(1). If the proponent does not wish to proceed with an undertaking and withdraws his notice, then there should be some provision to give notice to other interested parties that such a withdrawal has taken place.

Is there any place where that notice has to be given? Other parties would not know that it had been withdrawn and might be preparing to present--

Hon. Mr. Norton: I think that would be under section 7 in the regulations that would set out the circumstances under which notice would have to be given, and surely that would be one of them.

Mr. Chairman: Are there any further amendments or discussion with regard to section 6? Shall section 6 carry?

Section 6 agreed to.

Mr. Chairman: Are we ready with section 5? Mr. Minister, do you want us to carry on with section 8, or would you like to go back to section 5?

Hon. Mr. Norton: We propose to deal with the concern expressed under section 5 by proposing an amendment to section 13, which is the section dealing with appeal. Perhaps I can just indicate this and, if it appears to meet your concern, then we can deal with it when we come to section 13.

We propose that section 13 be amended by adding thereto the following subsection: (6) A decision by a tribunal, body or person, mentioned in section 5 shall be deemed to be a decision of a joint board which would deal with the question of the right to appeal.

Mr. Kerrio: I will accept that.

Hon. Mr. Norton: That deals with your concern about the appeal not being denied.

Mr. Swart: That is right.

Hon. Mr. Norton: Then the amendment we are proposing to section 5(4)(b) should deal with your concern about a hearing.

Mr. Swart: It does not satisfy my concern.

Hon. Mr. Norton: Maybe we just have to agree that we disagree on that specific thing. Maybe it is time to deal with section 5, and then we can deal again with your specific concern under that subsection.

If you agree that what we are proposing in section 13 addresses your concern about the appeal we can come back then to your concern about the hearing perhaps.

Mr. Swart: Mr. Chairman, maybe you do want to deal with the motion I am going to put. I was hoping we could come to a compromise on this because I am not convinced that there is a conflict between us here.

What I am trying to say is that the right of a hearing should not be taken away from any person who is a party to this because it is deferred to another tribunal. It seems to me that is perfectly reasonable. It seems to me it is what the government would want too. That will not prevent it under (b).

This (a) gives very broad power. It says: "The joint board may impose such terms and conditions and give such directions, or both, in respect of the proceedings or the matter or part deferred as the joint board considers proper." This is exceedingly broad. I want to add to that and I will so move, unless there is some compromise which can be reached, and I would hope there is because I do not think we want to lose this and I do not think you want to lose it.

Hon. Mr. Norton: It may not be clear, Mr. Swart, that the board cannot make such a decision except at a hearing. In other words, there would be a hearing and if they were to contemplate a deferral of a matter under section 5(4)(b), then the

people present at the hearing would be able to argue that it ought not to be deferred without a hearing because it is in controversy, if you were to accept our amendment. If the board overrode that argument, then presumably the option would be to appeal to cabinet. So I think there are protections against the board arbitrarily doing that.

Mr. Swart: But I pointed out that the question of controversy may not have arisen by that time. It looks to me as though there is pretty broad power on deferral under section 3. If it is going to be deferred--and I am repeating myself here--then I think the right of a hearing that we would have if it stayed with the joint board should still be applicable to that tribunal or body, whatever the case may be. I am sure that must be your intent, Mr. Minister.

Hon. Mr. Norton: Yes, and I think that is what is meant by this

Mr. Swart: But that is not what this says.

Hon. Mr. Norton: It is not as if they are meeting in an in camera session and deciding that certain things are going to be pushed off for others to decide. It is something which comes up during the course of the hearing to which, if the parties who are present have an opportunity to argue before the board, if the board is contemplating deferring it without such a hearing, they say no.

Mr. Swart: Then the board makes the decision.

Hon. Mr. Norton: That is something that is important, whether it is the size of a pipe or whatever it may be.

Mr. Swart: But the board makes a decision to defer it.

Hon. Mr. Norton: That is right.

Mr. Swart: Once it makes that decision, then it is dealt with in a different manner as far as the public is concerned than if it stayed at the joint board hearing. As long as it stays at the joint board hearing, they must use the various acts which are applicable to that which provide for hearings. Under 5(4)(a) they can give any directions that they wish.

Mr. Jackson: Clause (b) restricts their ability to do it without a hearing. Their power to give directions under 5(4)(a) would be restricted by 5(4)(b).

Hon. Mr. Norton: If the amendment is accepted.

Mr. Swart: Yes. It still is a different circumstance than if it had remained at the joint board. The joint board may direct the matter or part be deferred or be decided without a hearing if, in the opinion of the joint board, the matter or part is not in controversy. I am not sure how you can decide whether it is in controversy or may come in controversy when it gets to that body.

Hon. Mr. Norton: If the opinion of the parties is that it was in controversy, is in controversy, or subsequently that it was something of sufficient substance that it ought not to have been deferred without a hearing, then they have a right of appeal.

Mr. Chairman: Mr. Swart, we are going around the clock.

Mr. Kerrio: I have a question on section 24.

Mr. Swart: Can I move a motion while we finish with this?

Mr. Chairman: Mr. Swart moves that the following words be added to section 5(4)(a), "but not so as to deprive the right of any person to a hearing which is provided under the respective acts or regulations."

9:50 p.m.

Hon. Mr. Norton: Are you not going to put something that is agreed to in terms of not being noncontroversial?

Mr. Swart: Why is this not better than noncontroversial? Rather than have that other clause in there at all, here we are dealing with it in exactly the same way as if they were dealing with it under the act.

Hon. Mr. Norton: Your amendment would mean that even though all the parties there suggest that is something we would accept could be determined by the director, or whatever, the board would not even have the flexibility under those circumstances to do it. It would have to have another hearing.

Mr. Swart: I move that anyway, Mr. Chairman.

Mr. Chairman: Again, your amendment or your motion is, "but not so as to deprive--"

Mr. Swart: "--any person of a hearing which is provided under the respective acts or regulations.

Mr. Chairman: May we vote on that without any further discussion?

Motion negatived.

Mr. Chairman: May we then move on? I do not believe we have done 5(3).

Mr. Charlton: Mr. Chairman, I have another question under 5(4)(b), if we can stay on that for a few minutes. I understand the minister is going to propose an amendment through one of the government members. There has been a proposed amendment which has been circulated, and we have discussed it a number of times here, in relation to the previous matter.

I think we have made it clear that we have some concern about the wording of the proposed amendment which has been

circulated. Can I ask the minister if there is a reason we could not use the kind of wording in the case of a deferral that we use in subsection (6) in relation to deciding a matter without hearing?

Hon. Mr. Norton: The difference is that here we are talking about a small part of what would be the substance of a hearing under some of the acts. Under those acts, it would be anticipated that the whole thing would be dealt with in one hearing in one time period and there would not be provision for deferral. But because of the nature of the hearing under the consolidated procedure, it may be necessary from time to time to defer a small part.

Mr. Charlton: Once you have deferred and have taken it out of this single hearing, it becomes a matter on its own. It has been deferred. The original hearing continues and makes a decision on all other matters of the original proposal, except that portion which has been deferred. Why can we then not deal with the matter which has been deferred under the same rules as we would deal with the whole matter originally in terms of whether or not there should be a hearing?

Mr. Jackson: Subsection (6) deals with the case where the hearing under another statute is either optional, or where there is at least a power under the other statute to make a decision without a hearing. Some of the statutes that are consolidated deal with matters where there is a compulsory hearing with no power under that statute not to have it. Therefore, if you were deferring something that was not in controversy under one of those statutes, with your proposed change in this act, it would not be possible to decide it without a hearing, even though it was not in controversy.

Mr. Charlton: That is the whole point. Where does it say that we are deferring something that is not controversial?

Mr. Jackson: The amendment does.

Mr. Charlton: The minister just got through saying that we may be deferring a matter which for some reason cannot be decided. It may or may not be controversial. The subject of his amendment deals with that. He is saying it will only go without a hearing if it is not controversial, but that is not limiting one from deferring it. He may be deferring a controversial matter.

Mr. Jackson: Then there will be a hearing unless it is noncontroversial because section 5(4)(b) with the proposed amendment places a limit on the power to defer without a hearing.

Mr. Charlton: Then why did we not say in subsection 6 in relation to a "whole matter"?

Hon. Mr. Norton: The thing contemplated in clause 6, to put it in perspective, is that, for example, under the Environmental Assessment Act there is no absolute requirement to have a hearing. If no one objects, then the review is circulated and there may not be any requirement for a hearing, if you did not have subsection 6 there to give the board the authority to deal with the matter without having a hearing. We are not trying to force hearings where they would not normally be held.

Mr. Charlton: We are not trying to under deferred matters either. Simply we are trying to ensure that the same procedures will apply with deferred matters that apply with the original application. In other words, if you defer a matter and there is a mandatory requirement for a hearing of that part of the deferred matter, if because of the nature of the deferred matter under the original act a hearing is mandatory, then a hearing should be held.

If the holding of a hearing is optional, I think the wording in subsection 6 sets that out. If it is optional and there are no objections and there is no controversy, then the hearing may be dispensed with, as the wording suggests. Is that not a correct interpretation of what subsection 6 says?

Hon. Mr. Norton: I can give you another, and perhaps more graphic, illustration of what was contemplated in subsection 4(b). In the course of the hearing the board may hear sufficient evidence--talking about a liner, for example--and may say: "All right, this is the kind of liner it ought to be, except we do not have the final plan before us. Therefore, we establish these requirements for a liner. If it meets these standards, it is fine. If it does that we have no objection." The board may say: "All right, since we do not have the final plans before us, we defer that for final approval by the director, who will ensure that it meets the conditions that we have established."

Are you suggesting that under those circumstances there ought to be another, separate hearing? Really, the matter has effectively been dealt with and the final approval has been deferred to the director. That is the kind of thing I think it is contemplating. I do not think you would really want to have another full hearing after you have already made that decision in a hearing.

Mr. Charlton: Again, Mr. Minister, we are not suggesting that in every case a second hearing would be required. According to my reading of the wording in subsection 6, if there were no objections, that kind of wording would allow them to dispense with the second hearing. But if in the specific example you were talking about, when the type of liner was announced and some of the original interveners then had some concerns, perhaps because of something that had happened somewhere else that may not be brought to the board's attention by the proponent when he finally says what the liner will be, those interveners may want to say, "Hey, we have heard a little about that liner and we would like to sit down and discuss it with you and we would like the second hearing."

Hon. Mr. Norton: They could appeal.

Mr. Charlton: In other words, they have the right at that point to make a new intervention. To me, that is what the wording in subsection 6 lays out. It also gives the board or a new tribunal or whatever, on the deferred matter, once it has been agreed to defer it, that if there are no objections then that wording is not going to force a second hearing.

10 p.m.

Mr. Chairman: Mr. Minister, will you in 10 words or less respond to that so that we can get on?

Hon. Mr. Norton: They could appeal, and if they can make a sufficient case, the cabinet could direct another hearing under the appeal provisions. That is the only thing, I guess, that I can say by way of assurance.

Mr. MacQuarrie moves approval of section 5(4)(a) and that section 5(4)(b) be amended in the manner proposed by the minister, namely, that clause (b) of subsection 4 of section 5 of the bill be struck out and the following substituted therefor: "(b) the joint board may direct that the matter or part deferred be decided without a hearing if, in the opinion of the joint board, the matter or part is not in controversy; and..." Mr. MacQuarrie also moves (c) as it stands in the draft bill.

Motion agreed to.

Subsection 4, as amended, agreed to.

Mr. Chairman: Mr. Minister, would you clarify whether you wish those four words left in or taken out of section 5(5)?

Hon. Mr. Norton: We would propose that they be left in and we will propose an amendment to section 13.

Subsection 5 agreed to.

Subsection 6 agreed to.

Section 5, as amended, agreed to.

On section 8:

Mr. Andrewes moves that subsection 3 be struck out and the following substituted therefor: "(3) Upon application by a party other than the proponent, a joint board may, from among a class of parties having a common interest, appoint a person to represent the class, but any other member of the class may, with the consent of the joint board, take part in the proceedings notwithstanding the appointment."

Mr. Chairman: Is there any discussion of Mr. Andrewes' amendment?

Mr. Swart: Not having seen this before, does "proponent" means the applicant? It does. In effect, what you could have here is that a person who is supporting the application, if the municipality gave approval or made an application for a waste sludge area, and a developer who also wanted it then could make application, that those who were opposing it, say, all of the neighbours in one area, could make application to the board that the board appoint one of that class?

Hon. Mr. Norton: I suppose if you had a grand conspiracy that could at least be proposed to the board. Surely they would be hard pressed to find a common interest as between the developer and the people who were opposing the proposal.

Mr. Swart: Mr. Minister, with due respect, I have attended a lot of hearings, and it would be very likely that if there are a great many citizens there who are opposing it, the developer would make application that only one be heard. I have been to hearings where they objected, where one person after another got up and said that they should only have one person representing those.

What you would have here in effect would be the very real likelihood that a developer who was in opposition to the opponents and was supporting the proponent would make an application to the board to appoint one member of the class.

Mr. Charlton: Mr. Chairman, on the same matter we had some fairly lengthy discussion on Friday and some mention of it again today, that you may have a class of parties, as your amendment calls them, having a common interest, but in reality they may not have all interests in common.

In other words, they may have some issues they wish to deal with that are the same and many more that are not common interests, that go beyond the framework which some of the others in that so-called class may feel should be presented to the hearing in order that all of the ramifications of the matter in question are discussed.

If the minister will think back to his original comments last Wednesday when first we sat on this matter and we raised this concern, his comment was that it was his understanding this section, as it is worded in the bill and the subsequent amendment being proposed here, was originally put in because some groups and/or individuals who were concerned with the cost of making presentations to boards could deal with it in a joint or class fashion.

It seems to us if that is the real purpose of this section in terms of appointing a representative of a class with a common interest, then those groups and/or individuals can decide that for themselves, but to give the board the power, on the one hand, to decide there is a class with a common interest and appoint a representative for that class, then to say the board may hear others from that class in addition, for us is just not good enough. It gives the board the power to limit and/or cut off.

Hon. Mr. Norton: I think you are being unduly sceptical. If the wording were to be changed, for example, so that it read, "upon application by a party who believes that they are a member of a class sharing a common interest," et cetera, anybody could stand up, be it the developer that Mr. Swart is concerned about or anyone else, and make an argument that he believes he has a common interest with these people.

Mr. Charlton: What is wrong with these groups deciding for themselves that they have a common interest and appointing one person to represent them?

Hon. Mr. Norton: It seems to me that is something which is open to argument before the board.

Mr. Swart: Mr. Chairman, if I may comment again, in the example you used that person would have to get up before the board and prove he had the same interest as these others. Certainly a developer could not do that, it would be much more difficult. That kind of wording, I think would be acceptable to us.

Hon. Mr. Norton: The only argument we have heard from a group or an individual before us--in fact it was one example that was used twice regarding an attempt to identify a class and to have someone appointed--in that particular case they succeeded before the board in arguing against that, as I understand it.

10:10 p.m.

Mr. Charlton: Yes, but if you will recall the context in which that presentation was made--

Mr. Chairman: Excuse me, a point of order, Mr. MacQuarrie?

Mr. MacQuarrie: I wonder whether section 8(1) and 8(2) have carried. We seem to be dealing and concentrating on subsection 3 of that section.

Mr. Chairman: I am sorry. I miss your point.

Mr. MacQuarrie: We are discussing subsection 3 at great length. An amendment went in on 3.

Mr. Chairman: Yes, we have discussion on the amendment that Mr. Andrewes moved.

Mr. Kerrio: Are subsections 1 and 2 carried is what he asked.

Mr. Chairman: No, subsections 1 and 2 have not carried.

Mr. MacQuarrie: I move that they carry, Mr. Chairman, before we wander all over the place. Let us get this thing done.

Mr. Chairman: No, I would say we are quite in order. We have dealt with section 8 as a whole and the only comment anybody had was in section 8(3). So we have restricted ourselves to the amendment to section 8(3).

Mr. MacQuarrie: Would it be in order to move that 1 and 2 be carried?

Interjection: Carried.

Mr. Chairman: Excuse me. There is an amendment and we

must have a vote on that amendment. You had a point of order, Mr. MacQuarrie, which I believe was not in order.

We are back to Mr. Swart. Would you please make it fairly speedy?

Mr. Swart: I am finished.

Mr. Charlton: Mr. Chairman, I was just about to start making my comments when the point of order was raised, if I may.

Mr. Chairman: Very quickly if possible, Mr. Charlton.

Mr. Charlton: If, as the minister suggests, the intention of section 8(3) is to provide for the possibility of representatives, I fail to understand why the wording is such that the board may appoint, as opposed to those groups and/or individuals appointing for themselves, and why we are using wording like "may" with reference to other members of the class participating if they so wish.

It just seems to us that is restrictive wording. The minister made reference--and this is what I was going to comment on just before we got cut off--to the presentations that were made and that these groups said that, after very lengthy argument in some cases, they managed to establish their right to be heard, notwithstanding appointed representatives.

The costs involved in dragging out the process for a month or six weeks to establish that they should be heard is just not the appropriate way for us to be proceeding here. We should be trying to accommodate the principle of the bill and to make this process as easy and accessible as possible, not forcing parties involved to spend two or three weeks arguing about whether or not they should have the right to be heard in addition to an appointed representative.

It seems to us to be totally ludicrous to be setting up a process which causes that kind of argument to go on at a hearing of this kind.

Mr. Chairman: Fine, thank you. I think the minister has stated his position on this and you are disagreeing with that position. Mr. Mitchell and then Mr. Kerrio.

Mr. Mitchell: First, on the point of order that Mr. MacQuarrie raised; I did not wish to challenge the chair, but we have dealt with specific subsections all the way through, and what Mr. MacQuarrie moved was quite in order since we were dealing specifically with section 8(3), but subsections 1 and 2 could have been carried. We would still have left that motion to be dealt with and the discussion carried.

Mr. Chairman: I understand, Mr. Mitchell, it is in order, normally, to deal with a whole section and not specifically have to pass 1 before 2, et cetera. We also have Mr. Andrewes' motion--

Mr. MacQuarrie: We have a question then on this.

Mr. Chairman: Yes, we have a question. Mr. Kerrio has asked to speak to it.

Mr. Kerrio: I make the point again that we are not moving amendments because we appreciate the circumstance and we would only make observations and proposals.

The point that was raised in regard to this section before had to do with the joint board appointing from among a class of parties having a common interest a person to represent the class. I raised the question as to whether the minister would accept that the parties having the common interest should appoint the individual to represent them in this hearing. I think it has some validity, Mr. Minister, would you not think?

Hon. Mr. Norton: I would think that in practice, that is what the board would do. It would appoint someone that the group said is the person they had agreed on to be their spokesman; that that is what the board would do.

But again, if they try to force on the individuals something which is a denial of natural justice, then there are remedies and the board knows that, and therefore it would be constraining.

Mr. Kerrio: Okay, but is it a denial where you would have a class that wants to be represented and you say to that class, "Well, choose a representative from among you because we cannot deal with every individual; it does not make any kind of sense," rather than what seems to be a dictatorial procedure where the board would choose someone from the class? It may be a minor point, but I will leave it with you.

Hon. Mr. Norton: I think in practice, what it would turn out to be is that the board would agree to recognize the person that they agree on.

Mr. MacQuarrie: Basically I was going to agree with Mr. Kerrio on this. It is common practice for groups appearing before boards to get together and appoint the spokesman, and the board recognizes the spokesman. The board does not appoint anyone; it just recognizes that party as being a spokesman for the group.

I think it would be certainly in excess of any board's powers to appoint someone as a representative of a whole group of ratepayers or interested parties, call them what you will. It is just like the board appointing a solicitor to represent them.

Mr. Kerrio: I would accept that if you would be prepared to propose it.

Hon. Mr. Norton: May I just respond briefly to that? In these kinds of hearings, it would appear to me that you might well be dealing with a class of persons who would have standing before the hearing but who might not all be there to agree.

For example, you might have a group of ratepayers or

residents of the area, and on a given day you may have some there and a decision is made at that time to recognize the class. However, the next day, you may have somebody appear who says, "All right, I happen to be a ratepayer in this area, but I have an interest that is not the same as the people who were here, and I did not agree."

It is hard to require agreement of a class of people and I think that is one of the reasons it was drafted the way it was.

Mr. MacQuarrie: All I wondered is whether the wording could be changed from "appoint" to "recognize," and recognize a person as representing the class.

Hon. Mr. Norton: That is no problem.

Mr. Swart: I am wondering, if we are going to accept the amendment, if I can move a further subamendment to this because I want to incorporate what the minister said at one point. It would be to read, "Upon application by a party who purports to be a member of a class, a joint board may, from among the class having a common interest, recognize a person to represent the class." So instead of it saying, "other than the proponents" I am really saying, "who purports to be a member of that class."

Hon. Mr. Norton: Again, you could have anybody stand up--it could be your developer--and say "I purport to be" and so it seems to me you would have the same thing, the same arguments before the board, and the board would end up deciding to either recognize or not to recognize someone.

Mr. Swart: I am sure no developer would stand up and say, "I represent all these people."

Hon. Mr. Norton: You used the example of a developer who might be in opposition.

10:20 p.m.

Mr. Chairman: Are you withdrawing your amendment to the amendment to the motion to amend?

Mr. Swart: No.

Mr. Chairman: Therefore the wording you wish--would you please give it slowly?

Mr. Swart: This is the wording I would like for the amendment: "Upon application by a party who purports to be a member of a class, a joint board may, from among a class having a common interest, recognize..."

Mr. Chairman: Mr. Swart moves that subsection 3 be amended to read: Upon application by a party who purports to be a member of a class, a joint board may, from among the class having a common interest, recognize a person to represent the class, but any other member of the class may, with the consent of the joint board, take part in the proceedings notwithstanding the appointment."

The words, "other than a proponent" are deleted. It now reads "by a party who purports to be a member of a class." That is the change.

Hon. Mr. Norton: I do not want to complicate things further, but it seems to me that Mr. Swart's proposed amendment would leave it open for a person who purported to be a member of a class of developers, if they made an application to the board, that from among another class--perhaps ratepayers--someone be appointed. I do not think it really resolves the concern that you had. There are two different classes.

Mr. Swart: Sure, but it's a case of a common interest.

Mr. Chairman: Shall we have the question on Mr. Swart's amendment?

Motion negatived.

Mr. Chairman: May we have the question on Mr. MacQuarrie's amendment of Mr. Andrewes' motion to amend? That was changing the word "appoint" to "recognize" in line four.

Mr. MacQuarrie: And "as representing" instead of "to represent," later in the same line.

Mr. Andrewes, do you accept that to your motion to amend?

Mr. Andrewes: Yes.

Motion agreed to.

Section 8, as amended, agreed to.

On section 9:

Mr. Chairman: Are there any comments with regard to section 9?

Mr. Breithaupt: On section 9(3), only the question with respect to how a municipal town hall might be tied up with a lengthy hearing. I can see if there is a hearing within a smaller community where the facilities for the municipal government are not very extensive, they may find the council chamber, or whatever passes it for it in the community, to be pre-empted in effect by a hearing that might go on for several months, inconveniencing a variety of people.

I am wondering if you really mean that this joint board is going to have the right to use the hall for a sitting and--as the subsection goes on--"the corporation of the municipality shall make all arrangements necessary for the purpose."

It seems to me a bit harsh on a smaller community.

Mr. Piché: A suitable hall would--

Mr. Breithaupt: I am just wondering what the minister's

view of it is. For a smaller community this situation could prove to be quite a burden.

Hon. Mr. Norton: That is simply a provision that is in the Ontario Municipal Board Act at the present time. Apparently it has not been a problem up to this point. Surely the board in making that decision would bear in mind. Surely they wouldn't take over council chambers and prevent council from meeting during the time that the hearing was continuing.

Mr. Breithaupt: It seems as though they have that power, if that is what you want to give them.

Hon. Mr. Norton: It is not a new power.

Mr. Breithaupt: I am wondering whether that is the kind of thing that is really appropriate.

Mr. Mitchell: This has been going on. The OMB has been doing this for a number of years. I know they do it in my municipality; they have done it in regional municipality as well. They always have been able to do this with agreement. I do not read it perhaps as strongly as I gather you are reading it. Usually these things are resolved through discussions with the municipality. That has been the case in ours.

Mr. MacQuarrie: Many municipalities do ask the boards to hold meetings affecting those municipalities within the limits of the municipality and do offer to make their municipal halls available. The board ordinarily sits during the day, four days a week, and municipal council meets at night. So, essentially there is no conflict.

Mr. Piché: Wouldn't it be more common sense to put in "a suitable hall"? Why go through this? I can see in communities, mostly in northern Ontario, that "a suitable hall" would be acceptable. Is it too late to do that?

Mr. Chairman: Are you going to make an amendment?

Mr. Piché: No.

Mr. Swart: I want to speak to this too. I agree with Mr. Breithaupt.

Mr. Piché: Let's hope that the minister gets the message and meets somewhere along the line.

Mr. Swart: There is no question that what Mr. MacQuarrie and Mr. Mitchell says is true. They do use the municipal halls and usually arrangements can be made. But this is pretty arbitrary in this act. My God, even if they need it for themselves, even if they need it for their council meetings during the daytime or committee meetings, whatever the case may be, they have to get out if the board says they want to use that hall. I would prefer not to see this clause in there.

Mr. Chairman: Is there any further comment on section 9?

Mr. MacQuarrie: Initially the OMB had the right, but they always asked the municipality. In fact, it used to be the other way around--the municipality asked them to come and use it.

Mr. Chairman: If there are no more comments or amendment of section 9, shall section 9 carry?

Section 9 agreed to.

On section 10:

Mr. Breithaupt: There was the paper that was brought forward with respect to a several page submission by Mr. Poch on this particular hearing fund theme. I would like to hear from the minister whether he has been able to consider these changes or whether he finds section 10, as printed in the bill, to be suitable as it is now.

Hon. Mr. Norton: As a matter of government policy at this time, the proposal brought forward by Mr. Poch in my opinion defies some basic government policy. I personally would not be willing to entertain it, although obviously I am in the hands of the committee.

Mr. Breithaupt: You have considered it, which is all that we could ask on the short notice we have had.

Mr. Chairman: Are there any further comments on section 10? Shall section 10 carry?

Section 10 agreed to.

Sections 11 and 12 agreed to.

10:30 p.m.

Mr. Chairman: Gentlemen, I am going to give at least a second or two for someone to speak up before the shouts of "carried" occur. Section 13?

Mr. Kerrio: Just a minute. I have got a lot of good stuff on that one.

Mr. Swart: Mr. Chairman, I call to your attention to the clock. I do this not wanting to cut off discussion, but this can be done in the House.

There are two or three amendments as yet about which I have some concern. There are two or three sections. This can be reported back to the House, go to the committee of the whole and we can move amendments there if there is something we feel strongly about, rather than carrying on indefinitely.

Mr. Breithaupt: Of course, the bill will go through the committee of the whole stage in any event in case members who are not present here might choose to make a comment on some section.

I think that the bill could be reported as it now is. There has been a number of amendments. Unless there are other particular

amendments which the minister has and would like to see in the copy of the bill as reprinted by the committee, because those are likely the only amendments which may be accepted and it might be better to place those and get them into the reprinted bill, if I might make a suggestion.

Hon. Mr. Norton: There are two that have grown out of the earlier discussion about earlier sections which we propose to--the concern which we propose to meet in amendments--one in section 13 and one in section 24.

Mr. Breithaupt: Perhaps we could have those amendments put so the bill is reported back at least as complete as practical.

Mr. Chairman: Mr. Swart, will you unrecognize the clock to permit that?

Mr. Swart: I will.

Interjection: Take off your glasses, Mel.

Mr. Chairman: Fine. Who is going to make these amendments?

Mr. Andrewes: I would like to make them.

On section 13:

Mr. Chairman: Mr. Andrewes moves that section 13 be amended by adding thereto the following subsection: "(6) A decision by a tribunal, body or person mentioned in section 5 shall be deemed to be a decision of a joint board."

Hon. Mr. Norton: This one will provide for an appeal.

Mr. Chairman: Is there any further discussion on Mr. Andrewes' motion to amend?

Mr. Mitchell: I would move that section 24--

Mr. Chairman: No, excuse me. We have a vote. Shall section 13(6) carry?

Motion agreed to.

Mr. Chairman: I understood we were only unrecognizing the clock to get into amendments. Correct. Mr. Mitchell.

Mr. Mitchell: Section 24, Mr. Chairman.

On section 24:

Mr. Chairman: Mr. Mitchell moves that subsection (1) of section 24 of the bill be deleted and the following substituted therefor: (1) This act does not apply in respect of an undertaking in relation to which, before the day referred to in section 3, a hearing has been commenced under an act set out in the schedule or prescribed by the regulations."

All those in favour of Mr. Mitchell's motion to amend, raise their hands, please. All those opposed?

Motion agreed to.

Mr. Chairman: I am advised that I should be asking if the amended sections carry.

Section 13, as amended, agreed to.

Sections 14 to 23, inclusive, agreed to.

Section 24, as amended, agreed to.

Section 25 agreed to.

Schedule agreed to.

Section 26 agreed to.

Bill 89, as amended, reported.

Mr. Kerrio: Would you beg leave to sit again?

Mr. Piché: Do you recognize the clock now?

Mr. Chairman: Yes, we are adjourned to reconvene on Wednesday morning.

Excuse me. Before anybody leaves will we need time on the fire marshal's bill for Wednesday afternoon? Will we be sitting Wednesday afternoon? We start Wednesday morning on the fire marshal's bill.

Mr. Kerrio: Are we sitting Wednesday?

Mr. Chairman: Wednesday morning.

Mr. Piché: No, we are sitting Wednesday afternoon.

Interjection: We are sitting here Wednesday morning.

Mr. Chairman: Right. Do we need Wednesday afternoon here for the fire marshal's bill?

Mr. MacQuarrie: Yes, it is a very important piece of legislation.

Mr. Chairman: You are the parliamentary assistant to the Solicitor General (Mr. McMurtry) whose bill it is. Do you suggest that we attempt to get the House leader to authorize our sitting on Wednesday afternoon--

Mr. MacQuarrie: Yes.

Mr. Chairman: --keeping in mind that the House could rise Thursday or Friday?

Mr. MacQuarrie: It would be my strong suggestion that we deal with the amendments to the Fire Marshal's Act as expeditiously as possible.

Mr. Chairman: Is it your suggestion also that we contact the House leader to authorize a sitting of this committee on Wednesday afternoon?

Mr. MacQuarrie: I would strongly suggest that. Yes.

Mr. Chairman: Is that agreed?

Mr. Kerrio: That sounds fair.

Agreed to.

Mr. Chairman: The committee is adjourned until Wednesday morning next.

The committee adjourned at 10:38 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

FIRE MARSHALS AMENDMENT ACT

WEDNESDAY, JUNE 24, 1981



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Bradley, J. J. (St. Catharines L)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Piché, R. L. (Cochrane North PC)
Renwick, J. A. (Riverdale NDP)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Dean, G. H. (Wentworth PC) for Mr. Mitchell
Spensieri, M. A. (Yorkview L) for Mr. Breithaupt

Also taking part:

Breaugh, M. J. (Oshawa NDP)
Miller, G. I. (Haldimand-Norfolk L)

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Bateman, J. R., Fire Marshal
McMurtry, Hon. R. R., Solicitor General
Ritchie, J. M., Director of Legal Services

Witnesses:

From the Ontario Association of Fire Chiefs:

Saltmarsh, L., Secretary
Wreatham, W., President

From the Ontario Hotel and Motel Association:

Burton, C., Vice-President (Hotels)
Matthews, W., Executive Director, Planning and Development
Reid, W., Planning and Development
Schmalz, L., Chairman, Fire Safety Committee

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, June 24, 1981

The committee met at 10:19 a.m. in room No. 151.

FIRE MARSHALS AMENDMENT ACT

Consideration of Bill 59, an Act to amend the Fire Marshals Act.

Mr. Chairman: Gentlemen, we have seven, our quorum. Could we start our consideration of Bill 59, an Act to amend The Fire Marshals Act? The Solicitor General is here. He may wish to make an opening statement, so I suggest we proceed with that.

Hon. Mr. McMurtry: Very briefly, Mr. Chairman and colleagues, this is important legislation and I look forward to the discussions which are going to take place here in committee.

We have circulated a number of amendments which we intend to move. We regret that the amendments we propose were not contained in the original Bill 59, but we think they represent a significant improvement. They are being introduced as a result of consultation with a number of interested parties and we will have an opportunity to discuss these individual amendments.

I do not think I have anything more to say on opening, Mr. Chairman, other than that I am looking forward to hearing from the delegations that are appearing today and from the individual members of the committee.

Mr. Chairman: Thank you, Mr. Minister. We have six witnesses who wish to appear before the committee. The first ones are from the Ontario Association of Fire Chiefs. Chief William Wreatham and Chief Saltmarsh are appearing together. I take it you are president and secretary of the Ontario Association of Fire Chiefs. Would you sit there, please?

Chief Wreatham: Mr. Minister, Mr. Chairman and gentlemen, thank you very much for the opportunity of appearing before you this morning. I trust you are well aware that the Ontario Association of Fire Chiefs has been fully supportive of an Ontario fire code. We have been watching this very carefully for a number of years. We have lent our full support and our recommendations and suggestions over the past years.

We were very pleased to see the bill pass its second reading. As the minister indicated, we were not aware that there were so many amendments coming in at this particular stage. We have had an opportunity to give it a cursory examination and I would like to make one observation with regard to one section.

From the reference that is made to the amendments, there is a section with reference to subsection 2c, which says, "Where the officer making an inspection orders the making of repairs,

alterations or installations in the building"-- I emphasize the words "in the building"--"other structure or premises, he shall furnish a copy of the order" and so on. I would respectfully suggest that further consideration be given to changing the word "in" to the word "of." I believe it would have some different connotation as far as the inspection is concerned and the issuing of the order.

I use for my reference the building code itself. I look at section 1(e) where it mentions "construct means to do anything in the erection, installation or extension or material alterations or repairs of a building." I believe they use this particular clause for the reference for the wording of that amendment. The word "in" is far too broad in our interpretation of it. For instance, if we placed an order for the installation of an extinguisher in the building, we would then have to make out an order and make sure the building commissioner received a copy of that order. We feel that this is too broad. If the term was "of" the building, it would not be so fine. So we ask for that to be given some consideration.

Hon. Mr. McMurtry: Briefly in response, we appreciate your concern and we realize that it is couched in rather broad terms. The example you give is one that is illustrative of the particularly broad terminology. In the normal course of events we would agree that there is not much practical sense in supplying a copy of the order in those circumstances.

As you know, we have received a number of delegations representing the building industry, in particular, and their concern, which I think is legitimate--and they have no difficulty in recognizing the vital role you play--is that some of these changes could affect the structure of a building, even without the knowledge of the local fire inspector. That is not to suggest that local fire inspectors are not fully qualified, but, given the complexity of modern structures today, it is quite possible that a structure could be affected without the local inspector's knowledge. In order to avoid possible conflict in that area, it was thought wise to frame it in rather broad language.

We realize there are going to be some situations caught, such as the illustration you have just given, that perhaps are impractical. In order to make sure that there is not this type of conflict, this type of problem developing, we do not think it represents too heavy an onus. We are simply trying to make it clear to everyone that we are trying to be fair, that people who have complied with the Building Code Act, 1974, are not going to be caught by an order, that a person who has acted in good faith and who has complied in every respect will not to be required to make a significant structural change. As you know, there is a very real concern about that in the building industry. Again, I want to emphasize that is not to attribute any bad faith whatsoever to local fire inspectors. But they do feel that this could arise, and we just hope that this mechanism would keep everybody on side.

As you know, our friends in the building industry are very concerned about the fact that we have gone as far as we have to enshrine legislation as to the role of the local fire department,

which we think is so vital. In doing that in the public interest, we want to give every assurance to the building industry that we are not going to get into the situation where somebody who has built in good faith, in accordance with the building code, is going to be caught up with some order that is going to conflict with the code. We realize we may catch a silly situation, like a fire extinguisher, but we do not think that is too high a price to pay in order to have everybody support what we are attempting to do.

Chief Wreatham: I would like to assure you that I am not questioning the intent of the clause itself. It is just that when I recognized where the general wording was extracted from, I recognized, in comparing the two, that one word was changed. I thought perhaps it might have been accidental, and that accidental change of "in" to "of" does change the intent.

Hon. Mr. McMurtry: We will take a look at it certainly, but to substitute the words "installations of the building," I am a little concerned whether or not that can be interpreted. Perhaps Mr. Renwick might have a suggestion.

Mr. Renwick: I recognize the general statement that the Solicitor General made, but I think the point that was being made by Chief Wreatham was a very limited point. It simply had to do with the accuracy of the language rather than anything to do with the principle of it.

10:30 a.m.

It seems to say now that the making of repairs in the building, the making of alterations in the building, making installations in the building, other structure or premises has a connotation of being within the building and not speaking directly to the building as a whole. I may be wrong, but I thought if one could be purely grammatical I suppose one would say the making of repairs to the building, which is common language. I think making alterations in the building, which again is alterations to the building, might have a different connotation, or making installations--I do not know what the language for that is.

I thought it was a purely grammatical point because if you talk about the making of repairs in the building, you think of being inside the building and making repairs inside, when repairs are maybe required to be made outside. I guess I want to ask Chief Wreatham if that is what the intention is--

Chief Wreatham: That is basically the intent, yes.

Mr. Renwick: --rather than the general principle of how the two operate.

Mr. MacQuarrie: Basically, Mr. Chairman, I agree with Mr. Renwick. It seems to really focus on a question of sentence structure as opposed to any significant changes in the legislation as envisioned. It is a question of the proper use of prepositions here and getting things to really mean what we intend them to mean.

Mr. Chairman: Would the minister like to respond to that in view of the other comments?

Hon. Mr. McMurtry: I think the chief has articulated very well the concerns of his association and they are understood by the members of the committee. Between now and the introduction of the actual amendment, we will take another run at the drafting, chief, to see if we cannot meet your concerns more effectively in that area. I am not such a highly qualified legal draftsman that I would like to make any sort of instant suggestion.

Mr. Chairman: Could you carry on with the next point?

Chief Wreatham: I certainly would not want to do anything to delay the movement of this at all. That is not my intent, believe me, I am most anxious to see this go through and certainly the fire service is. I would like also to reinforce the view of the fire official being responsible for the enforcement of the code. I can assure you that we will do our utmost to see that it is done in a fair and equitable way as we have done in the past under the Fire Marshals Act. I am sure you have never heard of any abuse under the Fire Marshals Act.

We have indicated through the fire marshal's office that the Ontario Association of Fire Chiefs will be most pleased to assist the fire marshal in the quick, effective and efficient training throughout the fire service of Ontario with the fire code and become fully conversant with it.

I hesitate to make this one comment because I know that this has been put to you on a number of occasions, and certainly at the Royal York the other day, but we are indeed concerned. I guess if we are concerned in any particular area it is how the fire marshal's office is going to receive more and more load as far as fire service is concerned, particularly the way more ministries are going to put more fire service work on it without some compensating factor in staffing and funding. I was very pleased to hear your comment the other day. You did voice concern that the fire marshal's office should indeed be boosted, if you will.

Hon. Mr. McMurtry: They badly need additional resources.

Chief Wreatham: It is an area that has been neglected, in our opinion, for some time and we would like to give our support there. I can assure you that the fire service and the Ontario Association of Fire Chiefs are behind this. I would like to thank you very much for the opportunity of making this presentation.

Mr. Renwick: We seldom have an opportunity to speak directly with you about these matters. There is a concern I have. I sit for one of the inner city ridings in Toronto. Does your association have any real sensation about the extent and degree of an increase in arson?

Chief Wreatham: Yes, certainly, Mr. Renwick. We are very concerned about it. Our own association and our brother association, the Canadian Association of Fire Chiefs, are quite active in this area.

Mr. Renwick: Could you express it in relation to now and, say, five years ago? Can you give any dimension to the extent of the increase or your sensation at being actually on the ground as to what is happening? Do you get any sense that there is any organization behind any of the arson that is taking place or are they isolated incidents?

Chief Wreatham: From the perspective we have at our association in a very broad view, we are well aware of more and more incidents of arson. The Canadian Association of Fire Chiefs now has a major program going right across Canada. As for whether it is organized, I am not in a position in our association to say, other than from hearsay we get through our association. The police have indicated that in some cases they are of the opinion that there is and in some they are of the opinion that there is not.

Mr. Renwick: In Ontario?

Chief Wreatham: Yes. Locally, as far as my own municipality is concerned, the type of arson that we encounter is, in my opinion, not of an organized crime type.

Mr. Renwick: Isolated incidents?

Chief Wreatham: Yes, isolated incidents, but certainly in a city like Toronto proper it may be a different story. I would not want to speak for Toronto proper or for a city like Hamilton. Perhaps Chief Saltmarsh has an opinion--in fact, I am quite sure he has an opinion--particularly when he deals with automobile fires.

Mr. Renwick: I have another point, if I am not imposing on the committee. I have been urging the Solicitor General, both privately and publicly, as I am sure others have as well, that the question of fire in high-rise buildings, whether they are office buildings, hotels or apartment houses, is one on which some kind of an overview should be taken. My own suggestion was that there should be an experienced person appointed as a commissioner to have an overall look at the whole question of fire prevention, fire control, fire warning and fire safety, to have an overview of all of the questions related to that because I have a funny sense that there is a lot of information that has not perhaps been pulled together and nobody has looked at it as a complete single topic.

Would you care to support my request to the Solicitor General that he consider some such forum to look at all of the questions?

Chief Wreatham: There is little doubt that the industry itself is concerned. When we talk with people who are involved with the hotel industry, they are concerned. I believe the developers and the like are concerned. I believe they would welcome a central forum where they can get some guidance on what is right and what is wrong. I do not think there is any other way but to be in a positive vein to make sure that they are getting the right information.

Unfortunately, the information starts appearing suddenly right after a major incident. With respect to the information and the legislation that is starting to be considered down in the states, for instance, after the various fires in Las Vegas, it is amazing the amount of information that is starting to flow up. Legislation is considered but always after the tragedy. Perhaps there is a need for a commission to pool this sort of consideration.

10:40 a.m.

Mr. Renwick: I am not an alarmist, but I have this sensation of just thousands of people going into the high-rise buildings in downtown Toronto every day for business purposes, as employees, as workers. Then thousands of people live in the high-rise apartments and many people go to hotels of one kind or another. I just have a sense that it would be a very wise precaution to have some competent person or persons with expert advice and so on conduct a public look at what can be done in the whole field.

Chief Wreatham: I think it is an excellent suggestion, yes.

Mr. Piché: I have just one or two questions. Having been a fireman for five years, I know what we are talking about here this morning, I hope. On the last point you made, were you concerned, did I understand you right, that the fire marshal was taking over some of your responsibilities? Or did I misunderstand that, that you were showing some concern that responsibilities as far as enforcement and things like that were being taken away from the local departments?

Chief Wreatham: No sir, not at all.

Mr. Piché: I misunderstood you then.

Chief Wreatham: I am sorry if I gave you that impression. My concern was when I see the possibility of the fire marshal accepting the responsibilities of other ministries in hotel fire safety and the like. The fire marshal's office must be supported with staff to do a proper job--and funding.

Of course, that is just one area. The fire college training program is what I am thinking of. I am thinking of investigators. We have had some inquiries about arson and tying that right in with both. One of the greatest needs in this province today in dealing with fire is the need for more fire investigators. Indeed, I trust that we will be soon making an approach to the Solicitor General's office with some comments from our association about our concerns about the lack, in our opinion, of staff as far as investigators are concerned.

A very large portion of the reported suspected fires in this province are going uninvestigated because of no staff or because the staff is very thin. We are getting alarming reports from the fire chiefs in northern Ontario who are waiting days for an

investigator to arrive because they are spread so thin across northern Ontario.

Mr. Piché: It is going to be worse now since they are closing some offices in northern Ontario and they should be left open.

Chief Wreatham: Yes, sir. The concern with arson can be expressed very strongly by the fire service but the investigation responsibilities are with the province and they must have the funding. This is another area where the fire marshal's office must start being recognized with some funding.

Mr. Renwick: Could I just follow up on that very briefly? I know nothing about firefighting, but I assume that the place where the request for the investigation originates is with yourselves, the chiefs in the particular location, and so on. I get what you are saying is that many of the investigations that are requested by members of your association go unattended throughout the province.

Chief Wreatham: That is right.

Mr. Breaugh: I wonder if I could pursue just a bit because a number of people, including the minister himself, have now said on a number of occasions that we will, in effect, not be able to implement all the things we are trying to do with this particular piece of legislation simply because there are not the resources there to do it.

I do not quite know how to express this, but I know the minister, in speeches which he has made and before this committee in estimates just a week ago, said the same thing, that he does not have the people or the money to implement this in the way it should be done. We have a group before us this morning who are admitting that there are serious problems in investigating situations where arson is alleged and that those investigations do not take place for several days after the fact in many of the reported incidents.

Somehow the committee has to come to grips with that. If anything, it is one of the few occasions where I have seen a consensus formed very quickly by everybody on the committee from all parties and the minister and people coming in to testify before the committee from the outside. I do not think it is acceptable that we would proceed with this legislation when we all know that there is a major flaw in the system, namely, that the horses are not out there to implement it.

It seems to me that we are promoting a sham if we pass legislation here which purports to do good things, which will solve a number of problems which have been under investigation and discussion for a lengthy period of time, and yet we all know at the moment we pass the legislation it cannot be implemented.

I would like to hear your comments. Is it because we are moderating our language or what?

w Hon. Mr. McMurtry: We have the fire marshal here too, as you know. He may want to contribute to this discussion as well.

Chief Wreatham: The passing of this legislation concerns the fire chiefs on the local scene, the community. When I am making reference to the lack of staffing within the fire marshal's office, I know the close relationship that the fire service has with the fire marshal's office. Realizing that he will be overseeing this legislation--at least I am assuming that he will be overseeing this fire code--it in no way affects the operation at the municipal level. We are operating with a fire prevention group. The firefighters are being trained in fire prevention. Indeed, we are augmenting that segment as far as fire prevention is concerned. So we are doing the local scene.

When, say, a liquor licence group is taken over by the fire marshal, I do not know just whether the fire marshal's staff is going to be able to look after that unless they get an influx of staff. I am concerned with that sort of thing.

To not pass this would be a hardship on the municipalities. There are a number of municipalities that are waiting for a fire code. They have put off adopting the national fire code, waiting for the Ontario fire code. For instance, our own municipality has had the 1963 fire code--we are up to the 1980 national fire code now--but we have held off, waiting for this. We would urge you to go ahead with this legislation because the type of staffing I am referring to will certainly not change matters with regard to this.

Mr. Breaugh: I appreciate that there are going to be dramatic differences. This piece of legislation is not going to make a hell of a lot of difference in Shining Tree or Dubreuilville. It will make a difference in places where there are heavily organized firefighting agencies and municipal building inspectors and where the fire marshal has access to the place.

But it concerns me when I hear the minister repeat statements which he has made in here, that he is going to have some difficulty in implementation, that this fire code could probably go into effect, say, in Metropolitan Toronto tomorrow and most of the municipal firefighting associations and the municipal organizations would be able to handle it.

There are around the edges some problems which we are fairly clear about now. It strikes me that in some way, shape or form the committee, as well as passing this legislation, ought to be solving or attempting to solve that other problem of providing the resources to do the job which we intend to happen. That whole package will not happen unless the resources are there. Maybe we should invite the cabinet in.

Mr. Chairman: Chief Saltmarsh, do you have some comments to make regarding the proposed bill?

Chief Saltmarsh: I would certainly support what Mr. Wreatham has said, that the Ontario Association of Fire Chiefs has been looking forward to the introduction of the bill and is quite pleased.

10:50 a.m.

I am not speaking as a member of the association but as the fire chief of the city of Hamilton when I say there is some legislation that the city of Hamilton has that is somewhat more stringent than the fire code is proposing. We would hope to maintain that more stringent legislation as it applies, but the bill contradicts that and says that the Ontario fire code will replace all existing legislation. I have written to the secretary of the review committee, of which Mr. Bateman is the chairman, to bring that to his attention and see if there could not be something done in that particular matter. That is really the only point I see.

I encourage the House to pass this bill and go on with the act that we have been kicking around for some six or seven years. We are very pleased, as an association, to go ahead.

In reply to Mr. Renwick on the arson problem, I would not care to say that there is any organization as it affects arson in our city, but there certainly is a great deal of arson emergencies that we have to contend with and the staffing of the Ontario fire marshal's office does not allow all suspected incendiary fires to be investigated. In fact, the staffing does not allow for any incendiary vehicle fires to be investigated. We have had about \$1 million of vehicle fires in Hamilton-Wentworth in the past year that are of suspected origin and they are not being investigated. That concerns me and I am sure it concerns everybody.

On the matter of the high-rise, I would support a good look at the high-rise situation. We now have on the market promoters of 15-minute masks. I think that was discussed before this committee. People are writing to the fire chiefs across the provinces asking them whether they should use these masks or not. I am certainly not endorsing any masks. I do not think the masks are efficient for the job that they are being promoted to do. There should be some kind of look at this type of problem.

There are other documents coming out that are telling people in high-rise buildings to go to the roof, do this, do that. It is time that the fire service of Ontario said to all the people of Ontario and the transient people coming to Ontario, "This is what you should do. This is what we recommend." There should be a broad statement right across the province.

Mr. Renwick: I am delighted to hear you say that.

Mr. Breaugh: Could I just pick up on that? We have discussed this before in here. There seem to be some odd things occurring.

For example, I am aware that several firefighters' associations are literally going almost door to door selling certain kinds of smoke detectors and that there has been a great deal of media attention paid to fires, particularly fires in hotels and other kinds of high-rise buildings.

Just as a natural flow of the free-enterprise system, there are now going to be a great number of people out there selling their wares--in some cases advice, in some cases equipment. There has obviously been a market created and a lot of attention paid to it. Somebody is going to move into that void and flog equipment, which may or may not be the right thing to do.

I notice in a number of the hotels now--and I am not sure exactly where they are getting their information--some of them are providing little packages to their guests about what to do in case of fire. There is some conflicting advice there on precisely what one should do.

Mr. Renwick's notion is that some kind of a formal look, review, royal commission--whatever--should now occur. There is a need to have a central clearing house for that. Either a one-man commission or some agency of that nature with the ability to assess different types of equipment and different types of advice should be put in place.

It would not necessarily be a five-year study costing \$18 million, but there is a need to move quickly into that area and provide--I don't like the words--legitimate advice to the public at large and co-ordination to sort out these problems. That would not necessarily be a very expensive operation, but it certainly would be a very useful one.

If we do not, then we leave it to anybody out there who wants to fill the void. That concerns me somewhat.

Mr. MacQuarrie: It might be a matter for the Ontario Association of Fire Chiefs.

Mr. Breaugh: It is quite possible that it could be the agency which conducts the review or establishes the commission.

Mr. Piché: And report back in about a month. I have just one more question on these masks. We have discussed this before and I know that they are not approved. Isn't it better to have something than nothing, even the mask I have seen? We passed it on to the Solicitor General.

Mr. Breaugh: That's the old argument. A parachute that does not work is better than no parachute at all.

Mr. Piché: You are up there and you have nothing. You have a mask that doesn't work. It is better than having nothing. I think there should be some priority in this discussion to see if we can come up with something that would be of some assistance when an emergency occurs. I think you are the right people to look into that and come back to us in the near future.

Chief Wreatham: We will take that recommendation under consideration with our executives and give it a lot of good thought.

Chief Saltmarsh: I do not think the Ontario Association of Fire Chiefs would have all the facilities to conduct that type of tests.

Chief Wreatham: They have the knowledge if that is what you are looking for.

Chief Saltmarsh: Yes, we have the knowledge, but we do not have the facilities that would go into the testing to certify that, yes, this is going to meet certain requirements if they are established. But I certainly think we would be willing to join with some group to undertake that type of thing.

Chief Wreatham: And what better group is there than the fire marshal's office with proper funding? They have testing facilities at the fire college.

Mr. Piché: And the funding.

Mr. Renwick: I recognize the importance of that single question of equipment, but that is only one aspect of what I was trying to raise. I look forward to the day that when you walk up to a hotel desk in Ontario you will be handed a uniform set of instructions and advice as to what to do. If there is some kind of a mask readily available--not that everyone should carry his masks--in the hotel, then the person getting it would know that it was an approved piece of equipment that would serve certain limited purposes so that he would know what he is to do. I do not think you can come to that kind of conclusion until you look at the whole of the question because out of the whole of the question would come that kind of question.

In addition to that, there is the major question of whether or not in Ontario we have on a co-ordinated basis the kind of major equipment which must be required for significant fire prevention or firefighting in the high-rises. There must be a lot of basic information out and around if we could just get it together, get it sorted out and have some kind of public sense about it. Until the concern or the apprehension of the public is alleviated or the attitudinal education of the public takes place, we are discharging less than our public responsibility on it. To wait until after the event seems to me to be just dreadful.

Chief Wreatham: The passage of this legislation and the Ontario fire code will be the first step to assuring the people in the high-rises and the hotels and the like of their safety.

Mr. Elston: I have a couple of questions for the two chiefs. I want to get to the point of dealing with the implementation or any difficulty you might see in implementing the provisions of the fire code vis-à-vis matters that might overlap with the building code. For instance, now we see that there is an exemption. I wonder if you see any difficulties in the present implementation of this when it comes to the building code where buildings are currently under construction.

Secondly, do you see any difficulties with the regulations as they were printed some time ago, where you might like to see them toughened up, in particular in relation to the provisions which you have in Hamilton which are more rigorous than the ones here? Should that be done before they go into effect?.

Chief Saltmarsh: Mr. Chairman, with regard to the compatibility of the building code and the fire code and, similarly, the enforcement agencies, I believe that both codes are very defined as to their authority.

The proposed Ontario fire code indicates from completion of construction to demolition. That is the area of the fire code. Of course, the building code would then come back in during this period where there are substantial renovations and the like. I do not think there should be any particular problem there. I think the problem has been in sections with building departments where there tends to be an overlap presently with fire safety matters through the likes of property standards, where property standards are enforcing some fire safety matters as is the fire department. Hopefully, this will stop this sort of thing and clarify it for the owner-occupant. I see more of a clarification, certainly a clarification all the way through here.

Mr. Elston: Some of the areas, like Hamilton, for instance, exceed the provisions here. Are those substantial and should they not also be looked at by us now?

Chief Saltmarsh: I think the proper place for those to be looked at, if we maintain section 3(4), is at the committee reviewing the Ontario fire code, which is composed of the fire marshal and two or three other ministry officials. If they put the requirement in the regulations, then there will be nothing particularly wrong with this particular section. If they do not, then I am going to have some problems, I am going to have a lessening of our fire code procedures. We drew this to their attention some weeks ago.

Mr. Elston: Have you thought of making changes in the regulations which would make them more rigorous.

Hon. Mr. McMurtry: Perhaps you do not understand the process, Mr. Elston. The draft regulations were circulated two years ago in order to invite comments. These draft regulations were nothing more than draft regulations. They were circulated for the purpose of inviting interested parties to make comments.

The submission made by the chief of the fire department in Hamilton with respect to strengthening the code in a manner that all municipalities interested can take advantage of in the interest of all citizens is something that is of great interest to us. I think the chiefs here, the association, agree that there is a very close working relationship between their association and the fire marshal's office, and the fire marshal would not approve or agree to any regulations that did not maintain a high level of fire safety.

But I think there is some agreement that there should be uniformity throughout the province. This is why we think this section is necessary. This consultative process is ongoing and will continue, assuming the legislation is passed this spring, until the fire code is completed, hopefully, at the end of the summer which was the target date we announced a few weeks ago. Obviously, we are not going to be very happy if Chief Saltmarsh is of the view that our fire code is going in any way significantly to lessen the requirements that presently exist under the municipal fire bylaws.

Mr. Elston: I do appreciate your concern about my knowledge of the system but I--

Hon. Mr. McMurtry: I just wanted to make clear to you that the regulations that were circulated and published two years ago were for the purpose of inviting comment and were not carved in stone, and this consultative process will be ongoing. Perhaps we could ask the chiefs who represent their association whether they are satisfied. I think perhaps your question is whether they are satisfied with this process.

Mr. Elston: Obviously, there are some areas where they feel there might be some changes in the draft, and I was concerned that these be looked at by you. What I am also getting at is how close you are to finalizing these draft regulations.

Hon. Mr. McMurtry: We have indicated that we would hope to have them concluded by the end of the summer. That is still our target date, isn't it, Mr. Bateman? We can assure you that there will be this ongoing consultation with the fire chiefs' association.

We would be most unhappy, obviously, if we came up with a uniform fire code that was not satisfactory to the association. It would undermine public confidence in what we are trying to accomplish if the fire chiefs' association felt critical about our efforts. So we are interested in satisfying all responsible bodies.

Mr. Elston: You will be taking a full look at the Hamilton municipal bylaws.

Hon. Mr. McMurtry: Oh, yes, very definitely.

Mr. G. I. Miller: Mr. Chairman, a supplementary to that: The region of Haldimand-Norfolk has indicated that in the region there the municipalities have their own fire chiefs. The region is in control of building. Who takes precedence, the fire chief or the building code? Can you clarify that?

Hon. Mr. McMurtry: We are dealing with two codes, Mr. Miller, as you know: the Building Code Act, 1974, and--I hope--the new uniform fire code. We have provided that if there is any conflict with the building code, the building code will supersede. If somebody has constructed a building and has complied totally with the building code, it would be unfair to him if he were faced with major structural changes because of a fire code.

But we are very concerned, and in a moment I am going to ask the chiefs if they would direct their attention to the issue that you have just raised, because it is contained in the brief that has been submitted to this committee by the municipal liaison committee, which apparently chose not to attend in person, but simply wrote this letter. I think your concerns are addressed in paragraph two of this submission.

It states, " Municipalities feel that it is essential that the authority to appoint the individual to be responsible for the enforcement of the code remain within the municipalities." Our concern is that the local fire departments, together with the fire marshal's office, be the individuals to administer the code.

It would appear that some municipalities, and I believe perhaps the region you refer to, have other ideas. They perhaps might want to give this responsibility to the building code people. This issue is of great concern, not only to the fire chiefs' associations, but to the firefighters' associations throughout the province.

It is my view that the administration of the fire code should be the responsibility of the fire marshal's office and his agents, the local departments. That is my view, and I think perhaps you might like to hear from the associations.

Mr. G. I. Miller: I would like to just make one further comment on that. I think the relationship between the fire chiefs and the regional building department is quite good--

Hon. Mr. McMurtry: Oh, yes, and should remain so.

11:10 a.m.

Mr. G. I. Miller: --and I think we ought to leave it between the two of them.

They mentioned the fact that the region of Haldimand-Norfolk and Sudbury region were two regions where the planning was at the regional level and the fire chiefs at the local level. They may be two special areas that would need some special assistance.

Chief Wreatham: I am not being regional in that sense. I just turn to what Chief Saltmarsh said, he being regional. He indicates that there is no particular problem as they see it. Certainly we have been emphatic in addressing the fire code in the sense that, yes, we feel the fire service should be responsible for the fire code. Who better should be responsible for the fire code?

We have been responsible for it for a number of years with the co-operation of the fire marshal's office. Fire inspections are not new to us and fire codes are not new to us. We have had far broader powers under the Fire Marshals Act, extremely broad powers. They were not as definitive as they are now. I am sure

that the experience of the fire marshal's office and that of the province has indicated that we never abuse these powers. Now that it has been made more definitive and more refined, there is no way of abusing it. I think you will see that the fire service will treat it with the respect it deserves.

Hon. Mr. McMurtry: It is unfortunate that we do not have the liaison committee here in person, but as I interpret this sentence, "Municipalities feel that it is essential that the authority to appoint the individual to be responsible for the enforcement of the code remain with the municipalities," it would appear to me that the municipalities want to have the option of placing this responsibility with the building department. I would like to invite your comments with respect to this brief that is at present before the committee.

Chief Wreatham: I would certainly have to say no to that. We have taken this stand deliberately and sincerely all the way through our concerns with the fire code, extremely so. We do this from experience. We feel that there have been occasions of duplication and conflict of service when there has not been delineation of our responsibilities.

The fire service feels it would like to have some sense of security when it enters a building, knowing that it has been the one who has inspected that building. When a catastrophe has hit, who is the first on the line? The fire chief is usually the first one who appears. I have not seen a building commissioner appear before the television cameras at any of these tragedies that have occurred, and he built the place. As I say, the fire chief ends up baby-sitting the building after it has gone up. I do not see any building commissioners in there being responsible for it after it goes up.

There are parts of the building code now that make requirements for safety under construction. There have been many reported instances of buildings on fire while the building is under construction, where the required standpipe going up in the building has not been supplied. Whose responsibility was that while the building was under construction?

We would like to think that if the fire service was responsible for that, we would make sure that pipe was going up. I would prefer, sir, once that building is up, if we are going to be baby-sitting the building and if we are looking after the building, to have some sense of security in knowing that building has been looked after.

Mr. G. I. Miller: Will the fire marshal's office supersede the building code?

Hon. Mr. McMurtry: There are two different codes. We are optimistic that, as has already been suggested, the fire department and the fire marshal's office, which are responsible for the administration of the fire code, will be able to work effectively with the building people who are responsible for the building code. We are talking about two separate codes, which I hope are not in conflict, but will be administered separately, again, I hope, with some high degree of harmony.

I have made it very clear to the building industry, which does not necessarily agree with me, that I feel, for the reasons that have just been very well articulated by the president of the association, that the fire department should have this responsibility and that their involvement should not be superseded by the building department. This, I have to say, is an issue of some controversy, but, as we have looked about the province, we believe this can be worked out well from an administrative standpoint and that there need not be any conflict.

The private sector, of course, would be concerned about being caught up in any such conflict where their building department tells them to do one thing and the fire department, with respect to the code, states some different requirement perhaps in relation to the issuance of a building permit.

We think that people acting in good faith, with a reasonable administrative approach, could avoid this sort of problem. We do not agree with the municipalities which would like to have the option to--can I use the word "undermine"?--the role of the fire department with respect to fire safety. That is a judgement we have made and I think it is a judgement that would be supported by most members of the Legislature. I think that is the issue, is it not?

Mr. Dean: In the paragraph which was quoted in the municipal liaison committee's letter, it would seem to me that the reason for their making this suggestion is found in the last sentence of the second paragraph to the effect that small municipalities may not have a full-time fire department. What does the Solicitor General see there as the way this is going to be satisfactorily resolved?

Hon. Mr. McMurtry: I think I know what the answer is, but I want to discuss it with the fire marshal.

As I understand the situation, we are talking about two possible scenarios where there is not a full-time fire department. There may be a voluntary fire department, in which case that department or members thereof would be appointed as agents of the fire marshal for enforcement of the fire code.

Where there was no volunteer fire department, and we are talking, I would think, of relatively few municipalities, then a local municipal official would have to be appointed as an agent of the fire marshal's office to enforce the fire code. But, given the vital role of the fire departments with respect to fire prevention and fire safety, we want to ensure that they have a lead role where they do exist.

Mr. Dean: They are suggesting that there may not even be a full-time fire chief, and I know that there are probably hundreds of municipalities where that happens. Would you foresee this meeting the requirement of a full-time fire chief then?

Hon. Mr. McMurtry: No. There would be no requirement for a municipality to appoint a full-time fire person just because of

the enactment of the code. Mind you, I might say, at the same time, we are seriously considering recommending amendments to municipal legislation requiring municipalities to maintain a fire department. This is something which is of interest to the chiefs who are here and to their association.

As you know, there are such provisions in relation to policing, and we think perhaps the time has come to provide for some mandatory legislation with respect to fire departments as well. But there will be very small municipalities that will continue, I assume, even if there is such legislation, to maintain some sort of voluntary fire department, but I am not too sure what they would do. With respect to policing, it depends on the size. Mr. Ritchie just said essentially all cities and towns must maintain a police force. We think it would not be unreasonable to make a similar provision for fire departments.

Mr. Breaugh: What about those areas which do not have a fire department or a municipal government? Who then would implement the fire code?

Hon. Mr. McMurtry: As far as unorganized municipalities are concerned?

Mr. Breaugh: Yes.

Hon. Mr. McMurtry: They are not required to provide policing.

Mr. Breaugh: Or fire service.

Hon. Mr. McMurtry: Or fire service at the present time.

Mr. Breaugh: Who then, legally and technically, would be charged with the responsibility of implementing the fire code?

Hon. Mr. McMurtry: Nobody under the present legislation.

Mr. Breaugh: I suppose this is a little on the theoretical side, but it seems quite possible to me that someone would move into an unorganized municipality and, for example, set up a resort, which would then bring into it most of the things which we are trying to cover under this code. Is there not some provision that someone would legally then be responsible, recognizing that would be unusual?

Hon. Mr. McMurtry: The fire marshal's office.

Mr. Breaugh: It would be.

Hon. Mr. McMurtry: Oh, yes. The fire marshal's office has the responsibility now. Anybody building a structure, such as a resort, which might very well be built, as you point out, in an unorganized municipality, would be subject to inspection by the fire marshal's office.

Mr. Breaugh: What about the provision of fire services?

Hon. Mr. McMurtry: Firefighting services?

Mr. Breaugh: Yes.

Hon. Mr. McMurtry: Unless there is some local volunteer department, there is no legal requirement, other than the requirements that would be laid down by a uniform fire code. In other words, you are saying that if there is a resort built in an unorganized municipality that does not have a fire department, and if there is a fire--

Mr. Breaugh: Who puts out the fire? Should there not be some provision for an unusual circumstance like that?

Hon. Mr. McMurtry: You might be talking about a resort in a remote area. I just do not know whether that could effectively be laid down. The major fire equipment would probably not be available, apart from the fire equipment that would be maintained by the resort itself. I do not know if you have any thoughts with respect to that, Mr. Bateman.

Mr. Bateman: As I think the committee knows, there are a number of communities that have had fire protection teams developed with the assistance of the Ministry of Northern Affairs. If the resort was lucky, there might be one of those nearby. Otherwise, as the minister says, they would be left to their own firefighting resources. That does not dismay me too much because the building itself would come under the fire code and, so far as life safety is concerned, I think that standard would be met the same as anywhere in the province. That is the main thing.

Mr. Breaugh: Would it not make sense to put some small provision in to deal with that? Across the northern part of the province where the unorganized municipalities tend to be, there are now in existence a number of resorts of different kinds and the potential is there at some point in time to develop that a bit further. There is no provision at all for firefighting services really. Would it not make some sense to try to design a section which said that in these unusual situations whoever goes in there and builds the resort is also responsible, not only to meet the fire code, but to provide some firefighting services? As you say, you cannot turn to the municipality. There is not one. You may not be able to turn to a volunteer fire department because there may not be anybody else there except those people who are working at the resort.

Mr. Bateman: I cannot give you a good answer to that, but there is an answer of sorts. The fire code does have provision for that sort of thing, for fire protection under fire safety procedures for establishing fire brigades within the building itself and ensuring they are trained and capable and have the equipment. Before that, when the building is being built, it is going have to have firefighting facilities built in, standpipes and extinguishers, which one would hope would be adequate, along with a knowledgeable trained staff in the building.

Mr. Breaugh: I am sure we are all aware there are places

in the north where there are resorts, some owned privately and some owned publicly by the province. I am not aware that there is much provision for firefighting services there. To my understanding, many of them would be exempt from this building code. What do they do?

Mr. Bateman: There are no provisions in current legislation with regard to placing an obligation on a resort owner to have trained personnel, but there is in the draft fire code. With your raising of this point, I think we will look at that a little more clearly.

Mr. Chairman: Mr. Miller, the supplementary you used was the statement you wished to make or the questions you wished to make. Is that correct?

Mr. G. I. Miller: Yes. I was just wanting to clarify, in answer to the question that was asked here, whether municipalities will feel that it is essential that the authority to appoint the individual to be responsible for the enforcement of the code remain within the municipality.

Hon. Mr. McMurtry: We do not agree with that.

Mr. Chairman: Mr. Renwick, did you have a supplementary on an earlier statement or questions?

Hon. Mr. McMurtry: Mind you, I should clarify my answer. We assume that most municipalities would want to leave it with the fire department, but we are not happy about the possibility of municipalities desiring to do otherwise.

Mr. Renwick: My question was to ask the Solicitor General or counsel to answer the question raised by Chief Saltmarsh in his capacity as chief of the city of Hamilton fire department which, I believe, is the same question which is on page two of the municipal liaison committee's brief, so that there is no misunderstanding about it.

Section 3 of Bill 59 states that the fire code supersedes all municipal bylaws respecting fire safety standards. Does this remain the case, however, if the provisions of a municipal bylaw are more stringent than the provisions of the fire code? I believe that was the point. Chief Saltmarsh, I think, was suggesting that his understanding is that the fire code was the floor and if they wanted more stringent requirements they could validly impose them. I am worried that there be no misunderstanding about that.

11:30 a.m.

Hon. Mr. McMurtry: Certainly this is a basic policy issue. One of the great concerns that have been expressed is in relation to the lack of uniformity across the province. I would be happy to have the chiefs who are here address themselves to that issue.

One of the goals in respect to this uniform fire code was to provide this uniformity across the province, which would mean that

the local bylaws would not supersede the fire code if they were more stringent. This issue was addressed earlier by Mr. Elston, and we indicated that there is an onus on us to satisfy the municipalities that may have in existence now, as apparently does exist in Hamilton, municipal fire bylaws which are more stringent than the draft code which was circulated two years ago. It was our desire to improve the draft code in order to satisfy the municipalities that this uniform fire code is adequate.

If we go the route that you suggest, Mr. Renwick--

Mr. Renwick: I was not suggesting any route. I just wanted to be sure that there was no misunderstanding.

Hon. Mr. McMurtry: I think there is a misunderstanding because I think the legislation, as I understand it, is quite clear that the uniform fire code would supersede municipal bylaws. I interpreted your question to mean that you felt that the uniform fire code should simply be the floor and if individual municipalities wanted to provide for more stringent bylaws they should have that right. That is different to what is presently provided by this legislation.

Mr. Renwick: I just wanted to make certain that Chief Saltmarsh was not under any misapprehension when he left this committee, because he had said he was anticipating that the more stringent requirements could be enforced in Hamilton. As I read the bill, they cannot be enforced in Hamilton.

Chief Saltmarsh: I recognize what the bill says, Mr. Renwick, and I would just say again that I have made representation to the committee hoping that the committee will see the error of its ways and amend the draft to meet the Hamilton situation as it applies.

Hon. Mr. McMurtry: Assuming that we can do that, chief, I gather the association does support the principle of a uniform fire code across the province.

Chief Saltmarsh: Wholeheartedly.

Hon. Mr. McMurtry: I can understand people making the argument that municipalities should have the right to provide more stringent bylaws, but I think that the chiefs' association takes the position that uniformity is law and, hopefully, our code will meet what they believe to be the adequate level of requirements.

Mr. Renwick: And presumably would continue to be open to representations that would be made to enhance the stringency of the code.

Hon. Mr. McMurtry: Yes.

Mr. Renwick: You always run into the damned problem, though, that some municipality will want to get a bit of a lead in an improvement which they think should be made and they may very well have to wait forever until it becomes part of the uniform code.

I suppose in the theoretical world the code should be, in a meritorious case with proper representation, subject to amendment to permit minor deviance as long as it was towards more rigid requirements if they came from a particular municipality. It may be possible to devise that kind of flexibility. You know as well as I do that often in the municipal field a good idea originates in one municipality and they want to have the benefit of it. Everybody agrees with the value of it, but somebody says we want to make that general, and we make that general three or four years later.

Hon. Mr. McMurtry: Possibly it would not take that long.

Mr. Renwick: Many times it does. There are lots of examples of that.

Mr. Dean: I am still not convinced there is a reason why you have to have sort of mind-numbing uniformity if there is something better that some municipal council wants to do. I have not heard anybody say yet why it has to be uniform. It certainly has to be a high standard, but if some municipality says it wants this higher standard, why should it be a concern of the Legislature? Has anybody got an answer for that?

Mr. Renwick: I tend to think it should come through the code. I think the flexibility should be in the code to permit that, rather than to have municipal bylaws and having an argument about whether they are in force or not.

Mr. Dean: That is what I mean.

Hon. Mr. McMurtry: The difficulty then is that we get right back to where we started from to some extent, and that means that there is no uniform fire code. We have the potential for a complete hotch-potch of fire regulations across the province which I think causes problems for everybody in relation to recognizing what is a proper level. It certainly causes a number of problems with the private sector.

With respect to training inspectors it undermines the effectiveness of the training program if we do not have a uniform fire code. The idea of having a uniform fire code, which we hope will be relatively stringent but fair, is to have the same level of enforcement across the province, which I think is relevant to the training. I think uniform training is advantageous. From the standpoint of the private sector, the building industry, uniformity is desirable.

It is important, as far as the provincial government is concerned, if certain municipalities are going to say, "Your fire code is not stringent enough. We think that our communities are being placed in peril because the uniform fire code represents sort of a watered-down version of what we think is appropriate." Obviously, that is not the sort of criticism that any government would feel very comfortable with. One would hope in those circumstances that the fire code in the particular case could be quite quickly amended.

I am not an expert with respect to fire safety, fire prevention and fire codes, but in meetings I have had with the fire chiefs' association, the firefighters' association and our own staff there seems to be a general agreement that on balance it is much better to have this uniformity than having various municipalities diverging from the uniformity--true, upwards instead of downwards. Those who deal with the issue on a day-to-day business and the private sector, the building industry, which is important to the economic growth of this province, also feels the same way.

That is my understanding of the situation, Mr. Dean.

Mr. Dean: It is not quite comparable through another illustration that I know of, but the Planning Act provides certain minimum standards for open space, for example, but that does not mean that every municipality has to confine itself to that standard. They can ask for more and the developer or whoever else is involved gets used to the fact that the municipality actually requires 10 per cent instead of five per cent. I think that is a healthy situation with respect to certain things.

I certainly defer to the experts in the field, that is, the professional firefighters, as to their desire for uniformity, but I still do not see that it is such an overwhelming need that it should be enforced. I see a need for a safe level which presumably is going to be required. I would like to hear further from Chief Saltmarsh on that, just very briefly, as to what his view is if it should come to a strictly uniform top and bottom level here.

11:40 a.m.

Chief Saltmarsh: I would agree with the minister's comments that the Ontario Association of Fire Chiefs strongly concurs with the uniformity. The only thing I have to say in that regard is that I want Mr. Bateman and his committee to make the legislation a little stronger than the draft as originally proposed some several years ago.

I have pointed out to Mr. Bateman, in my own particular instance, two areas that I am particularly concerned about. I am sure Mr. Bateman is aware of them; I have talked to him many times on that. I am hoping that this committee will change the draft legislation to meet the requirements that are presently in effect in the city of Hamilton and then they would become uniform across the province.

I agree with the minister that we do need the uniformity and in balance that is the way we should be going. It is going to be better for the endorsement of the code, the enforcement of it and the training--everybody can be trained to one set of standards. I think that is the way to go, although personally in the city of Hamilton I would like to see them change the draft legislation to be somewhat more stringent in two particular areas.

Mr. MacQuarrie: The fire code proposed will be complementary to the building code and, as I understand it, at the present time the building code is not written in stone. In fact, it is under almost continual review with two advisory panels sitting at regular intervals to suggest modifications and improvements. As technical advances come forward, they are incorporated into the code. I wonder whether an ongoing advisory committee is going to be doing the same thing, in effect, with the fire code.

Hon. Mr. McMurtry: I will ask Mr. Bateman to respond. Under the existing circumstances, with the municipal liaison committee, the fire chiefs' association, the firefighters' association, we are getting advice on a pretty regular basis from these various groups that are involved. Whether it would be necessary to formalize that to a greater extent, I do not know.

I certainly agree with the principle that you espouse, Mr. MacQuarrie, that this is the type of area where we want to get advice on a regular basis. Would you like to comment on that, Mr. Bateman?

Mr. Bateman: Yes, Mr. Minister. I think those organizations you have mentioned have been invaluable in the past and we will continue to rely on them. In addition, under the fire code structure and organization as it is proposed, there is going to be a fire code commission to hear appeals. These will highlight all problems, whether they are problems of being too severe or not stringent enough. I think we will be able to get a very good reading of the needs and the deficiencies of the legislation and take action.

Mr. MacQuarrie: I was wondering whether we should have parallel groups related to the fire code in the same way as these groups are presently related to the building code. For instance, there is a panel of professionals--architects, engineers, construction people and so on--who sit regularly to review complaints that come up and make recommendations and incorporate changes in the building code. There is a panel of material suppliers and the rest of it, contractors and the like, who give opinions as to better ways of handling things and better materials to be used in the structure. I just wonder whether it might be advisable to provide for a similar group in respect to the fire code.

The other thing was this question of uniformity where a municipality has exceeded the National Building Code, the national fire code, in terms of fire protective measures. In the municipality with which I was involved, we used a rather obscure section of the Municipal Act which related to controlling fires and the spread of fires and passed a bylaw which insisted on masonry dividing walls between units and row houses. Masonry walls have a fire resistance past two hours which I think exceed by quite some amount the requirements of the National Building Code, and also eliminated some of the alternatives that the National Building Code permitted. That legislation was struck down in the divisional court, fortunately after most of the multiples had been built.

In the meantime, the National Building Code committees were looking at this very question with a view to perhaps making the individual units in a row more secure and more protected from the spread of fire from adjacent units. It is this sort of readiness to change to meet circumstances, to meet new technology, to meet new ideas that might be beneficial in the fire code. Some ongoing process of review might be advisable and very helpful.

I am not arguing against the principle of uniformity because I think in essence it is good, although some municipalities with sophisticated staffs and their own building expertise may want to exceed it. The minimum established under the building code was a tremendous step forward in the province and I think that the fire code, properly prepared, will do the same and be a tremendous step forward. But I just wonder about this ongoing process of review of change to meet changing circumstances and changing needs.

Mr. Bateman: I would like to briefly touch on that if I could, Mr. MacQuarrie. I have been closely associated with the building code since its inception and it does work well. I would like to assure you that basically the same system is going to come into play with the fire code. We will have this fire code commission just as they have a building code commission.

The Building Materials Evaluation Commission does relate to the building code. I think the fire code can draw on their decisions, so we do not need two of them. What the building code relies on, as you know from your association in the Ottawa area, is the National Research Council, the National Building Code.

They developed the base code which was used as the basis for the Ontario Building Code as they developed the base code that was used for the Ontario fire code. They have ongoing committees with professional expertise and with highly qualified technical staff that are continually working on this on a cyclical basis. We have a number of members of our staff working on the fire code and the building code. I think this is where we will be looking to for progressive changes as the technology of the building industry evolves. So that will certainly happen with the fire code.

11:50 a.m.

Just very briefly on this question of uniformity, the fire code, of necessity, because conditions in existing buildings are so varied, is going to be a fairly flexible code. We will not have something that is going to force all buildings into the rigid mould of one building, as in Hamilton's bylaw for example. There will be flexibility. But I think that within that spectrum allowed by the flexibility, it is very important to have uniformity.

Chief Wreatham mentioned the good success we have had with the Fire Marshals Act; this goes back over 60 years and that is true. But where we have run into problems, it has been because a municipality has been asking for certain things and enforcing them under the Fire Marshals Act that have not been enforced by its neighbours. We feel this element of uniformity is very important with the fire code, so I certainly agree with the fire chiefs on that score.

Mr. Elston: Mr. Chairman, if I might just pick up on that, I know that the uniformity is a very important aspect of it. By cutting back on what one municipality might feel are very necessary regulations, I wonder whether we would be doing exactly what Mr. MacQuarrie gave as an example, that is, the use of some section of another act to prescribe those more stringent matters.

I wonder if that may cause some concern when it comes time to enforce the matter. I am thinking of some building bylaw, for instance, which may be implemented by a municipality to circumvent the uniform code as put down under this act. I only put that out to raise that as one of my concerns, but supporting the need for a uniform code.

You raised before the idea of adequate funding for staffing for the fire marshal as he picks up more and more of the concerns. Has the association looked into the matter of what this will mean for your staff requirements? Is there going to be any increase required? Have you looked at what that might mean to your service as well?

Chief Wreatham: If the question is directed directly to my department, I see it not affecting the staffing of the department. I am increasing staff because of the growing municipality, but I certainly welcome the coming of the code. As I say, I have been waiting for a number of years now for an updating, as have a number of municipalities. The municipalities are anxious to have an updated code. It does not affect the staff, I can assure you.

Mr. Elston: In terms of cost to the municipality funding it, you do not expect any increase there either?

Chief Wreatham: No, Mr. Chairman, I do not expect it. As a matter of fact, within our own department, we utilize the firefighting force. The firefighters will go out during service and in service. They take their vehicles out, say, to plazas and do inspections of commercial establishments. They are trained to do that type of inspections, so we utilize our complete firefighting force.

Mr. Chairman: Thank you. Does anyone else wish to speak?

Chief Wreatham: Mr. Chairman, if I may I would like to make one comment. I was negligent in making one observation. I indicated to you how extremely pleased we are at this particular stage of the development of the fire code. But I would like to make a positive statement that we are concerned with what the regulations will look like when they come out. By that, we mean that the fire service will not be content, will not sit back and watch the regulations come out if they are not complete. By complete we mean the nine parts including also the retrofit. In the various inquests that have been held, the majority of the recommendations have ultimately pointed at retrofit, not just general inspections. We trust that this is something that will be considered when the regulations come out.

Mr. Chairman: Are there any other questions of these two chiefs? Thank you very much, gentlemen, for your assistance today and for appearing.

May we have the representatives of the Ontario Hotel and Motel Association, Mr. Burton. Perhaps you would introduce the other people who are with you or who will be taking part in this with you.

Mr. Burton: Mr. Chairman, of the people who will be with me today, I will be deferring first of all to Mr. Schmalz, who is the chairman of the fire committee for the Ontario Hotel and Motel Association. The other two gentlemen, Mr. Matthews and Mr. Reid, are members of the planning and development department of the Canadian Pacific Hotels. My particular function is the vice-president of hotels for the Ontario Hotel and Motel Association. I am also the president of the association here in Toronto. Mr. Schmalz will lead off the discussion.

Mr. Schmalz: As the chairman of the hotel fire safety committee of the Ontario Hotel and Motel Association, certainly we are very concerned with all changes in the acts and amendments. This is the first time we have had an opportunity of appearing.

The only tragic part of all this is we were notified Friday and we were not quite sure what we were to be here for. If we are going to contribute to this sort of thing, we have to be in on it from the start. We realize that a lot of these acts get very technical, so as the chairman of this committee I have taken on an architect, Mr. Reid and Mr. Matthews of the CP Hotels, planning and development department.

We hope that in the future we can contribute in a common sense way, not just coming up and saying we do not like it and not giving a reason why we do not like. Always these things come right back to us that there could be a regulation that does not make much sense. By the time it gets to us, it is almost a tragedy. Now they are discussing here local municipalities, and that causes great problems.

In my own case I had to put in an exit light for one group, and the other group said, "Don't you dare put a bulb in it because it does not lead to the outside." Who do you listen to? These things can be extremely funny, but this is going on all over the province.

We have had quite a bit of dialogue with the fire marshal's office in the hope of putting a stop to some of this. We are very concerned that everyone is in the same ball game and that we are all under the same act and the same regulations. If we are not, and you let a municipality tell the government how to run the fire marshal's end of the business, you are in trouble and we are in trouble. So those are my remarks, and I think we would be open to any questions that you may ask.

Mr. Breaugh: Have you had a chance to peruse the proposed legislation and the regulations?

Mr. Schmalz: No.

Mr. Breaugh: Did you not receive a copy of the gazetted regulations some time ago?

Mr. Schmalz: This morning--yesterday afternoon really.

Hon. Mr. McMurtry: I think there is some misunderstanding. There is separate Hotel Fire Safety Act with very complete regulations which does govern the hotel and motel industry so far as licensed premises are concerned. It is our view that they are uniform regulations and there is a uniform fire code now in existence with respect to the hotel and motel industry.

12 noon

Mr. Breaugh: Do you share that view?

Mr. Schmalz: We certainly are very cognizant of the Hotel Fire Safety Act. We have been under this since 1971. But I can understand the thinking behind this group as to the one amendment I understand and that is that the regulations will be uniform right across the province, that we will all be under the same gun, which we are not right now. We have had a terrible time with the liquor licence board, the fire prevention officer--

Hon. Mr. McMurtry: What way do you see you have been affected by this legislation?

Mr. Schmalz: I think that from here on we will understand it. We will know exactly who we are listening to. We will have one person to talk to.

Hon. Mr. McMurtry: You are now under the Hotel Fire Safety Act, as you have just stated, since 1971. That is not going to change with the passage of this legislation and the regulations.

Mr. Schmalz: No.

Hon. Mr. McMurtry: The regulations are not going to be changed by reason of the passage of the uniform fire code.

Mr. Schmalz: But we are also under the fire prevention officer, who, in a sense, I suppose, is a bylaws officer for the local municipality.

Hon. Mr. McMurtry: Are you are talking about an agent of the fire marshal's office?

Mr. Schmalz: I suppose he is, but he is not as far as we are concerned. He certainly does not deal with the Hotel Fire Safety Act. He deals with a local bylaw.

Hon. Mr. McMurtry: Please excuse the delay. I was just trying to clarify in my own mind what the problem may be.

As I understand it, the Hotel Fire Safety Act and the regulations passed thereunder are interpreted by the courts to supersede any municipal bylaw. The problem may be that the municipalities are not necessarily aware of this.

The Hotel Fire Safety Act apparently--I had forgotten this--does not contain a section similar to that proposed for this legislation, namely, that the uniform fire code passed under the amendments to the Fire Marshals Act does supersede any municipal bylaws. Perhaps you do not have the same situation with respect to hotel fire safety regulations and for that reason some municipalities are coming along and--as you have just said--are saying, "We have a local bylaw that requires this or that."

In our own view and that of my law officers, that would not be enforceable in court. But it may mean that we should be considering an amendment to that legislation to clarify the situation.

Mr. Schmalz: But in our case, if the local fire prevention officer sends into the liquor licence board, or the building inspector sends into the liquor licence board, our licence could be under suspension if we do not apply ourselves to that particular work order from the fire prevention officer or the building officer. So we are really under the gun again.

Hon. Mr. McMurtry: It may be an administrative problem that we can take under advisement, because to our knowledge, we are probably talking about somebody from a local fire department. This may be a matter that will lead to an amendment under the Hotel Fire Safety Act. The actual passage of this legislation and the regulations thereunder really will not alter your situation one way or the other. But I am still happy to have the opportunity to discuss your problems as they relate to fire safety.

Mr. Breaugh: Is that not the nub of the problem? We are attempting to get to one--not different pieces of legislation implemented and governed and regulated by different agencies, but one.

Hon. Mr. McMurtry: I would like to hear what the fire marshal has to say about this, but it may be advisable--certainly it has been in the back of my mind--that once we get this uniform fire code straightened out, which does not apply to licensed hotels and motels, which already have their own code, there may be some value in placing it all under the same statute. I can understand the wisdom of that, and I think this is what you are suggesting, Mr. Breaugh.

Mr. Breaugh: I have been told that part of the problem is that when you go to build a hotel--it is not a licensed yet--you get hit with one inspection troop, carrying their big set of regulations with them. Then when the premises are licensed, you get hit with the second wave, a different troop coming in with a different set of regulations. Is that still so?

Mr. Schmalz: When you are building and you are going to be licensed, your plans are submitted to the liquor licence board, who, in turn, submit them to the fire marshal's people. They are approved at the fire marshal's office, come back to the liquor licence board, who then send out an inspector to make sure that you have complied.

That is another one of our problems, because six months later they can decide that the original plan is wrong. We have no recourse. We just have to spend the \$25,000 or \$50,000 they suggest, even though we have an approved plan. That is another one of our problems which, I suppose, is not going to be covered here.

Another thing that happens to us continually involves "interpretation." This act has been in since 1971 and they are still writing out many orders because of the interpretation of this act. You are never through.

Hon. Mr. McMurtry: At this point, it is important--I think everybody agrees--that we get on with the uniform fire code. We certainly will attempt to address these problems to the extent they can be addressed by provincial legislation and by amendments to the hotel fire safety legislation--with a goal down the road of placing it all under one act.

Mr. Breaugh: How much conflict is there between the two pieces of legislation and their adjacent regulations?

Mr. Bateman: I do not think there is any.

Hon. Mr. McMurtry: I do not think that is the problem. I think it is the question of local municipal bylaws that may be passed.

Mr. Burton: The problem, Mr. Chairman, is that there are governing authorities--three of them--and we applaud the idea that there will be only one inspection authority and that that inspection authority will be supreme. It is essential we think. It is important that that happen in all regards.

We strongly support the idea of the Ontario fire marshal being the overriding authority so that there is no doubt. We feel there is good, strong expertise in the Ontario fire marshal's office and that we should all be subject to that.

12:10 p.m.

Mr. Breaugh: If I understand this correctly, the minister has just said that this particular piece of legislation really has not much to do with you; that it may clear away some of the municipal bylaw problems but it does not directly affect you. If anything, they may, at some point in the future, move to standardize.

What would be the problem if you moved to standardize at one and the same time?

Mr. Burton: You have to be very careful of standardization across the province. What may apply in Metropolitan Toronto, where the availability of equipment, people, and technical expertise is greater than it would be in an outlying district, may not apply in that district. The character of the buildings is different. While some general principles can be applied to both high-rise and low-rise buildings, all those regulations do not apply equally to both.

One of our concerns is that where fire legislation is being undertaken, we have to be as equally concerned with the regulations that are promulgated.

Mr. Breaugh: Are you encountering many problems? There are numerous instances now of a complex which is built. One part is a hotel with licensed premises, dining rooms and so on. Adjacent to that, often under the same management corporation, is a residential complex. That seems to be a growing trend.

Does that mean that you have one law applying in one building and another law applying in another building, and each law having its own troop of enforcement officers, regulations and things like that? Is that not a little nuts?

Mr. Burton: Yes, that is what happens.

Mr. Schmalz: When you apply the Hotel Fire Safety Act to an apartment building--Plaza II, for instance, or Sutton Place--it becomes a tremendous problem because they do not know which act they are really under.

Mr. Breaugh: Would it not be better in these instances to have one code, one set of regulations that you had to abide by, one arbitrator for the system and one inspector for the system, so that at least you would know what the rules are?

Mr. Burton: The character of the occupancy of those buildings, I think, is different. Because the character of the occupancy is different, obviously some things cannot be the same. Hotels normally have 24-hour supervision. All buildings do not necessarily have 24-hour supervision.

Mr. Breaugh: You are arguing that you would like to continue the separation of the two.

Mr. Burton: But under one central authority.

Mr. Chairman: Thank you, gentlemen. Are there any other statements or questions?

Mr. MacQuarrie: In other words, you would like to have the fire marshal supervise the enforcement of the Hotel Fire Safety Act?

Mr. Burton: Yes, I think that would be acceptable to the hotels.

Mr. MacQuarrie: Because as I understand the Hotel Fire Safety Act, it is quite onerous as it now stands--justifiably so--possibly more onerous than the fire code which will evolve and is geared to adapt itself to a variety of structures of varying ages and varying types.

Mr. Burton: The statistics that are available from the Ontario fire marshal's office indicate that the safest building you can be in is a hotel.

Mr. MacQuarrie: Because of the Hotel Fire Safety Act, presumably.

Mr. Burton: And the administration and the concern the hotelkeepers have in observing it.

Mr. MacQuarrie: Certainly.

Mr. Chairman: Thank you, gentlemen. Maybe a comment from me.

There is a general rule of law dealing with statute specificity. A statute which specifically mentions a specific statute dealing with a specific item overrules a general statute. So, as the Solicitor General said, if you are dealing with the hotel statute specifically, it will override a general statute, unless it says otherwise in the bill.

That is why there is a confusion between acts and you are getting bugged by different people. Go to the most specific to your industry or your trade and that will overrule the general act. That is a general rule of law of solicitors.

As an oversimplification, if you have an act that deals with animals and there is one that deals with dogs, and you have a dog, you would go to the one that deals specifically with dogs. That will overrule the general act. That is an oversimplification.

Are there any questions? Thank you very much, gentlemen, for appearing.

We have three quarters of an hour. Could we start with the clause by clause? Is that the wish of the committee?

Mr. Breaugh: Are there any other groups which indicated that they wanted to appear?

Mr. Chairman: I understand not.

Mr. Elston: The Municipal Liaison Committee.

Mr. Chairman: They wrote in and did not--

Mr. Elston: Should it not be read into the record?

Mr. Chairman: They have three items in there and we have dealt with number one. That is about the municipalities being responsible for enforcement. The Solicitor General has said that the government's position is they disagree; they recognize this wish, but the bill says otherwise.

Second, Chief Saltmarsh mentioned section 3(3) of this bill superseding a municipal bylaw, even if the standards of the municipal bylaw were higher. But he deferred to the uniformity argument of that. So we have dealt with that.

The third aspect really is in the third paragraph about additional training of municipal personnel. It seems to me that is contingent or dependent upon the matter in the second paragraph where they are asking that the municipalities be responsible for the enforcement.

Mr. Elston: I agree that that has been done.

Mr. MacQuarrie: (Inaudible) perfectly true. I agree with Mr. Elston. It might be appropriate for you to read the letter in its entirety into the record.

Mr. Chairman: To have it in Hansard.

It is from the Municipal Liaison Committee, dated June 23, 1981, received on June 23 and filed on June 24, 1981. It is addressed to:

"Chairman Treleaven, MPP, Standing Committee on Administration of Justice, c/o S. Forsyth, Committee Secretary, Room 1502, Whitney Block, Queen's Park, Toronto, Ontario.

"Dear Chairman Treleaven:

"On behalf of the Municipal Liaison Committee, I would like to thank you for this opportunity to bring to the attention of the members of the standing committee some concerns expressed by municipalities regarding the provisions of Bill 59, An Act to amend the Fire Marshals Act. As you are aware, the Municipal Liaison Committee is comprised of representatives of the Association of Counties and Regions of Ontario, the Association of Municipalities of Ontario and the Rural Ontario Municipal Association, which collectively represent the municipalities of Ontario.

"Municipalities, while strongly supporting the need for a uniform fire code throughout the province, do have some concerns about the enforcement of the code. Municipalities feel that it is essential that the authority to appoint the individual to be responsible for the enforcement of the code remain with municipalities. This will ensure that the most appropriate individual in each municipality becomes responsible for the enforcement of the provisions of the code. This is particularly important in smaller municipalities where there may not be a full-time fire department and where a municipal employee in another department may be more appropriately named responsible for enforcing the fire code.

"There is also concern that additional training of municipal personnel may be required to ensure that the provisions of the code are understood and enforced.

"In addition, municipalities would appreciate clarification on the provisions of the fire code as they relate to both the Ontario Building Code and municipal bylaws relating to fire matters. Section 3(3) of Bill 59 states that the fire code supersedes all municipal bylaws respecting fire safety standards. Does this remain the case, however, if the provisions of a municipal bylaw are more stringent than the provisions of the fire code?

"As I stated earlier, municipalities support the need for and the proposed provisions of the fire code. There is, however, a need for clarification of these concerns.

"Thank you for the opportunity of raising these issues for the consideration of the members of the standing committee on administration of justice.

Yours truly, Bert Weeks, Chairman."

Signed by Diana Summers for Bert Weeks.

Those are the contents of the letter I referred to.

Mr. Piché: Mr. Chairman, did you mention that the Solicitor General was not in favour of the municipalities being responsible for the enforcement of the code?

12:20 p.m.

Mr. Chairman: Yes.

Mr. Piché: Was that discussed earlier?

Mr. Chairman: Yes, it has been discussed and the Solicitor General is against that suggestion of the Municipal Liaison Committee. The government's position is otherwise.

Hon. Mr. McMurtry: No. As I attempted to clarify, Mr. Chairman, we are opposed to giving the municipalities the option of removing the local fire department so far as their administration of the code goes.

We would think most municipalities would probably be quite content to leave the enforcement with the local fire department, but some municipalities would not. We are opposed to giving municipalities the option of removing the local fire department from the enforcement.

As you probably know, Mr. Piché, this is an issue of great concern to the fire chiefs' association and the firefighters' association, which felt that they might be removed from responsibility.

Mr. Piché: Yes, that is why I raised it. So you are not against it.

Hon. Mr. McMurtry: We are against them being removed.

Mr. MacQuarrie: Would it be possible to move to the clause by clause?

Mr. Chairman: Yes, that seems to be the consensus.

Mr. Breaugh: Before you start, is the ministry ready to proceed now or do you want a little time? Are you contemplating other amendments that you might want to draft and put in there?

Hon. Mr. McMurtry: I think we are prepared to proceed, thank you, Mr. Breaugh.

Section 1 agreed to.

On section 2:

Mr. Chairman: Are there any amendments or comments?

Mr. MacQuarrie moves that subsection 1 of section 2 of the bill be struck out and the following substituted therefor:

(1) Subsection 2 of section 19 of the act is amended by inserting after "property" in the tenth line "or that a provision of the fire code is being contravened" and by adding thereto the following clauses:

(d) with the approval of the fire marshal and on such terms and conditions as the fire marshal considers proper, the closing of the buildings, other structures or premises until such time as corrective action has been taken and the hazardous condition has been rectified; and

(e) the remedying of any contravention of the fire code.

Are there any comments by the minister on that amendment?

Hon. Mr. McMurtry: Without the amendment the fire marshal does not have any authority to close a building regardless of the hazardous condition. It is presently restricted only to the tearing down of the building or structural repairs.

This amendment is in part a response to some of the criticism of the opposition on second reading, which indicated that the fire marshal did not have sufficient authority in respect to buildings that were clearly hazardous, so this has been our response.

Mr. Chairman: Any other comments on the amendment?

Motion agreed to.

Mr. Chairman: Any other amendments to or comments on section 2?

Mr. MacQuarrie: On section 2(2), an amendment was proposed by the minister where we got into a bit of discussion on the use of the words "of" and "in." I do not know if counsel has any suggestions there as to whether we should make some changes.

Mr. Breaugh: That is why I thought it might be useful that this conversation occur later this afternoon or tomorrow morning, so that tomorrow we could come in with a printed motion. Do you want to change it?

Hon. Mr. McMurtry: What I was going to suggest, Mr. Breaugh, is that I have some concerns about changing it, and, subject to the committee, whether we could just leave this particular amendment in abeyance and come back to it and go on perhaps to the next clause, if you are agreeable.

Mr. Chairman: Are there any other amendments or comments in section 2 down to and including 2(2) (2b)?

Mr. MacQuarrie: I would move that that carry, Mr. Chairman.

Mr. Chairman: We could then carry that down to that point.

Mr. Breaugh: Why do we not just simply set aside debate on section 2 and return to it?

Mr. Chairman: The entire section 2? Fine.

Mr. MacQuarrie: On section 2--

Mr. Breaugh: We have some amendments on subsection 2 but I am suggesting we move on to section 3, so we do not have an argument.

Mr. MacQuarrie: We have subsection 2 and there is another proposed amendment where--

Mr. Breaugh: I am aware of that amendment. I am just saying let us move to the next section of the act and we will come back to that one.

Mr. Chairman: We move right past section 2 to section 3.

Mr. MacQuarrie: It is not section 3, it is section 2, subsection 3--a new subsection.

Mr. Chairman: We have agreed to go past section 2 right to section 3. We are not dealing with subsections.

On section 3:

12:30 p.m.

Mr. Chairman: Mr. MacQuarrie moves that section 19a of the act, as set out in section 3 of the bill, be amended by adding thereto the following subsections:

"(7) Where a person is convicted of an offence under subsection 5 of this section, subsections 15, 16, 17, 18 and 22 of section 19 apply with necessary modifications as if the conviction were made under subsection 14 of that section.

"(8) Where a person is contravening any provision of the fire code, subsections 20 and 21 of section 19 apply with necessary modifications as if the person were not complying with an order made by an officer."

Does the minister have any response to that? That is the first amendment to section 3.

Hon. Mr. McMurtry: There are alternative routes to go, first by an order, and then enforcement. Where there is a very simple breach, the fire marshal's office could simply proceed under subsection 5. It is really to clarify that there are these alternative processes.

For example, if under subsection 5 there was some trash that represented a hazard and it was not removed, it may be open to the fire marshal's office to lay a charge--assuming it was in contravention of a fire code--under subsection 5. The person might be convicted and yet nothing further would be done. In those circumstances, it would simply give the fire marshal's office the right to proceed with the other route--where the conviction by itself was not satisfactory to eliminate the problem, to proceed by the order route and the sanctions that are provided thereunder.

Mr. Elston: How would subsection 16, for instance, be modified to cover that? Section 5 deals with a conviction as it is proposed in the amendment. How would we, in subsection 16-- Of course, it requires that a tenant or occupant of a building spend up to 25 per cent.

Hon. Mr. McMurtry: The difficulty is that we are-- The amendments to section 2, as you will note, are very extensive, and this amendment to section 3 would apply to the new section 2, not the old one. I think that is where the confusion, understandably, arises.

Mr. Elston: I wonder if we are getting ahead of ourselves in trying to carry on with these until we understand fully how we are going to deal with these amendments.

Mr. Breaugh: I take it you are not proposing any substantive alterations to your written amendments to your section 2, no wording changes.

Hon. Mr. McMurtry: No.

Mr. Breaugh: I do not mind proceeding if that is the case.

Hon. Mr. McMurtry: I am advised by the fire marshal that he has just concluded a brief conference with our fire chiefs and they are content to let the wording stand as proposed. So we could go back to section 2.

Mr. Breaugh: I am in agreement with this amendment which is currently on the floor and I would be prepared to carry it and then revert back to section 2.

Mr. Chairman: We are dealing with Mr. MacQuarrie's amendment. Are there any other comments with regard to that? Shall the amendment of Mr. MacQuarrie carry?

Motion agreed to.

Mr. Chairman: Do you want to deal with the entire section 3? It is not dependent in any way upon proposed amendments of section 2?

Hon. Mr. McMurtry: Well, it is an appeal procedure, but I think it stands on its own.

Mr. Chairman: Fine. Are there any other amendments to section 3?

Mr. MacQuarrie: I think there are some proposed by the minister, Mr. Chairman.

Mr. Breaugh: I think, Mr. Chairman, that these amendments have been tabled with the clerk. I think we could dispense with the reading if the clerk has a copy of them, and simply allow Mr. MacQuarrie to move the amendment.

Mr. Chairman: Mr. Minister, do you have any comments with regard to that?

Hon. Mr. McMurtry: Yes. These amendments would alter the procedure for appeal from an inspector's order. Under the present legislation, the fire marshal holds a hearing with a further appeal to the county court. It is proposed that the fire marshal have an informal right to review and amend an order, but the formal hearing would be before a new fire code commission and, further, to the divisional court.

We simply submit that the current appeal system is outdated and impractical, particularly with the establishment of a fire code. The fire marshal having the role to act informally, where there has been perhaps an order made that is not really justifiable, rather than going through a formal hearing, he can simply amend it accordingly.

But then there would be this right to appeal to a new fire code commission which is modelled on the building code commission. The county courts really are not established to deal with this type of problem. We think this new fire code commission would be the appropriate body to deal with these matters because it would be an established membership of people who have some knowledge and degree of expertise in relation to the problem. There will be an opportunity to appeal to the divisional court where there is some matter of law involved.

Mr. Breaugh: Are you doing it with this amendment?

Mr. MacQuarrie: I would agree with the amendment of section 3 of the bill by adding new sections 19b and 19c to the Fire Marshals Act, 19b having eight subsections and 19c, two subsections.

Mr. Chairman: The reading of the amendments is dispensed with.

Shall that amendment carry?

Motion agreed to.

Mr. Chairman: We then return to section 2. Are there any further amendments or comments on section 2?

On section 2:

Mr. Breaugh:: We had the opportunity to peruse these prior to the committee meeting today and I am in agreement with the amendments as proposed.

Mr. MacQuarrie: I move an amendment, as proposed, to section 2(2) of the bill, which in effect strikes out subsection 2c of section 19 of the act and substitutes a new subsection 2c, and in addition adds to subsection 4a to section 19. That was in the motion put forward in writing by the minister.

Motion agreed to.

Mr. Chairman: Are there any further comments or amendments with regard to section 2?

12:40 p.m.

Mr. MacQuarrie moves that section 2 of the bill be amended by adding thereto the following subsection:

(3) Subsections 5 to 16 of the said section 19 are repealed and the following substituted therefor: new subsections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23; all as stated in the draft resolution prepared by the minister.

Are there any further comments with regard to Mr. MacQuarrie's amendment? Shall that amendment carry?

Motion agreed to.

Section 2, as amended, agreed to.

Section 3, as amended, agreed to.

Section 4 agreed to.

On section 5:

Mr. Chairman: Mr. MacQuarrie moves that section 5 of the bill be struck out and the following substituted therefor:

5(1) This act, except section 2 and subsection 2 of section 3, comes into force on the day it receives royal assent.

(2) Section 2 and subsection 2 of section 3 come into force on a day to be named by proclamation of the Lieutenant Governor.

Motion agreed to.

Section 5, as amended, agreed to.

Section 6 agreed to.

Bill 59, as amended, reported.

Hon. Mr. McMurtry: Thank you very much, Mr. Chairman and gentlemen, for your assistance in moving this right along. It was very much in the public interest.

Mr. Chairman: Mr. Minister, perhaps you would like to stay. We have been asked to have a general discussion in the committee with regard to summer sitting and with regard to--what shall we call it?--the police complaints bill, for want of a short title. The clerk advises me that advertising must take place, if it is referred to us.

Mr. Breaugh: I do not really think we can deal with legislation that we do not have on the committee's agenda yet.

Mr. Chairman: However, we all take off for parts unknown.

Mr. Breaugh: Then you will have to get hold of us in parts unknown.

Mr. Piché: I will be in Kapuskasing.

Mr. Breaugh: That's well known.

Mr. Chairman: I think the House leaders would like a bit of indication. I will be on an island with no phone as much as I can. I am just not going to let you near me.

Mr. Breaugh: I would suggest, Mr. Chairman, if this bill goes through second reading and gets referred to the committee, as I would anticipate it would, probably some form of public hearing at the committee stage should occur in the month of September. It would be my suggestion probably in the first week or so of September.

Mr. Chairman: Approximately three weeks are required for advertising, because it would be anticipated that it would be put in the ethnic press and then translated before that time. Also September has been taken up by other persons, committees, et cetera, so that we are not privileged to be able to sit in September.

Mr. Breaugh: Okay. The last week of August.

Mr. Chairman: There may be several weeks' hearings. Is there any feeling for late July, to put it on as soon as possible if it is referred to us?

Mr. Breaugh: The only feeling I have about late July is that it is still tough to convince me that you can have a good set of public hearings in the last two weeks in July. I really think you have to try to get around the vacation period somewhat. That is why I am suggesting if you want to go to the last couple of weeks in August or something like that, it is about as good as you are going to get.

Mr. Chairman: The Solicitor General has mentioned it would perhaps be a better hearing in the fall.

Mr. Breaugh: Do you want to wait until then?

Hon. Mr. McMurtry: I was content with September, but I am not aware of the business that the committee is committed to. I do not think we should rush it.

Mr. Breaugh: Sure. I am in agreement with that.

Hon. Mr. McMurtry: If we cannot get it on until September, I am prepared to wait until October.

Mr. Chairman: With consensus, we will leave it until we reconvene in the fall.

Mr. Breaugh: Sure.

Mr. Chairman: Agreed. That is now unanimous and has the wholehearted support of the chair. We have no further business in front of us. Obviously we will not be using the time we were allotted this afternoon, if necessary. Shall we adjourn to the call of the chair?

Mr. Breaugh: Amen.

Interjection: Agreed.

The committee adjourned at 12:47 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
TUESDAY, SEPTEMBER 22, 1981
Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Philip, E. T. (Etobicoke NDP)
Piché, R. L. (Cochrane North PC)
Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister
McMurtry, Hon. R. R., Solicitor General
Ritchie, J. M., Director, Office of Legal Services

Witnesses:

From the Canadian Civil Liberties Association:

Borovoy, A. A., General Counsel
Pitman, W., President
Strader, A., Research Director

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, September 22, 1981

The committee met at 10:05 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT, 1981

Consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Ladies and gentlemen, a quorum is in place. I believe the critics from each of the parties are here.

We have in front of us Bill 68, which was referred to this committee on July 3 by the House. We also have in front of us a schedule of witnesses. Is it the committee's wish that the schedule or agenda be adhered to as closely as possible throughout? You will notice there are time frames for each of the witnesses.

Mr. Mitchell: Mr. Chairman, I would hope during our deliberations in this hearing, so that things move along as smoothly and as easily as possible, that there is some flexibility in the schedule so that after the committee has heard certain people and perhaps ends questioning earlier than expected, we might be able to ask people wishing to make presentations to be available on short notice. That way we don't have to delay the process.

Mr. Chairman: I understand from the clerk that has been done.

Mr. Philip: Mr. Chairman, I have some concerns about today's schedule. The minister is scheduled to make his statement at 10 a.m. and he is given 15 minutes. There is no opportunity on the agenda for us to cross-examine him or ask him questions on it. Having just read the first seven or eight pages of his prepared statement I have some concerns about some of the things he has said in there. I think they should not go unchallenged until he appears later on in the committee.

Mr. Chairman: I will put that to members of the committee as a whole. I take it there is a consensus that the schedule be adhered to, subject to what Mr. Philip has just raised.

With regard to Mr. Philip's comment, having regard to the fact we have witnesses in the room ready to go, is it the committee's pleasure that those witnesses be held off so that the critics or others may question the Solicitor General after his statement, or that we carry on immediately with witnesses?

Mr. Williams: Why don't we simply extend the minister's

time until 10:30 to make it a full half hour; 15 minutes for his statement and 15 minutes for questions, and then play it by ear?

Mr. Chairman: Is that in order? Is that the consensus? Fine. Mr. McMurtry, do you wish to make a statement?

Hon. Mr. McMurtry: Thank you. Mr. Chairman, colleagues, ladies and gentlemen, we are pleased that discussions have begun today with our legislative colleagues and other interested members of the community as we examine this very important legislation, which is to provide a new civilian complaints review procedure for the Metropolitan Toronto police force.

At the outside I would like to say I am delighted Bill 68 has finally reached committee stage, after a long consultative process involving representatives of the police, municipal government and many other interested groups. Of course, the purpose of these hearings is to continue this consultative process and we await with interest the many submissions that are going to be made in the next few days. Certainly we will pay particular attention to these ongoing submissions.

As someone who has worked for many years to enhance the rights of the individual, I am personally convinced that Bill 68 represents not only a dramatic improvement over the existing state of affairs, but has also the best chance for success of any civilian complaints mechanism we have examined; and we have examined citizen complaint mechanisms across the world. Simply put, this legislation also has its foundation on the principle of co-operation rather than institutionalizing confrontation. Co-operation can unite; unnecessary confrontation can only divide.

10:10 a.m.

As a native of this community, one who has participated in and enjoyed particularly the multicultural, pluralistic mosaic that has helped to make it a unique community, I believe it is the atmosphere of co-operation and mutual trust which has contributed so much to this particular community's greatness. Traditionally, as we have adapted to our ever changing society we have resolved major problems facing us, generally within the atmosphere of co-operation. I believe very strongly that Bill 68 continues and, indeed, is consistent with that tradition.

We have designed a process which completely opens the civilian complaint system to public review, which requires the police force to respond properly and effectively to complaints of misconduct and which installs and creates independent civilians as the ultimate arbiters of acceptable police conduct. Yet, it still places on the members of the police force the basic responsibility to police themselves on a day-to-day basis, a responsibility which is consistent with the task delegated to them by our society. I would suggest that if we turn every complaint into an adversarial process between the police force and the individual, then we will only institutionalize confrontation when mediation and conciliation would often be more appropriate and certainly more in the public interest.

At the same time, we recognize that the present system needs to be improved, that it has generated some degree of dissatisfaction, hostility and mistrust between the police and some segments of the public. The police recognize this fact, and we are grateful for the co-operation received from both management and the representatives of the police association as this legislation was developed. When I note the significant changes wrought by Bill 68 in every phase of the existing civilian complaints process in Metropolitan Toronto, I have some difficulty in understanding those who appear to be so unwilling to give this initiative even an opportunity to prove itself.

I suggest, at the outset, that the philosophy of this bill is consistent with every major report or study done in Canada and elsewhere with respect to the processing of civilian complaints against the police. I refer specifically to the Maloney report, the investigation conducted by Mr. Justice Morand--now the Ombudsman--Judge Rene Marin's inquiry into the Royal Canadian Mounted Police complaint procedures reported in 1976, a recommendation by Emmett Cardinal Carter, and the McDonald royal commission, all recommending that the police should have the initial opportunity to resolve complaints.

Mr. Maloney, in his thorough study of the question in 1975, concluded, and I quote: "I do not believe that a mixture of civilian and police investigators is an answer. I would prefer the system to build on police competence and trust in police integrity, leaving civilian influence to review the quality of investigation." He went on further in his report, but this is not contained in my statement; I am quoting directly from page 2(11) of his report, "Accordingly, I have come to the conclusion that the investigative branch should be manned exclusively by trained police personnel."

Again, in Britain, after a very lengthy debate, the police complaints board triennial review report to the Secretary of State included the following recommendation, and I quote, "We are therefore convinced that it is neither practicable nor desirable to establish an independent investigative body which would perform all the tasks at present undertaken by the police in relation to complaints by members of the public."

Cardinal Carter, at page 18 in his report, stated, with respect to review of civilian complaints against the police: "In short, I view the necessary structures as being based upon these considerations. The first is that the normal procedure is to complain against a police officer to his immediate superiors. This, under most circumstances, should be all that is required. I am hopeful that the force is able to police itself and to exert whatever disciplinary measures are required."

Most recently, we have the recommendations of the McDonald inquiry into RCMP wrongdoing. Again, the recommendations of the commissioners, I would suggest, are consistent with the philosophy of Bill 68. The commission recommends the office of inspector of police practices, which I suggest is the equivalent of our complaints commissioner, a civilian who would monitor complaints against the RCMP. As in Bill 68, the RCMP would, in most

instances, be allowed the initial opportunity to resolve disputes. Let me quote from the report.

"There are...compelling reasons for having the RCMP investigate its own members in the majority of cases. First, as we explained earlier in this chapter, many complaints can be handled informally by the complainant and the RCMP member involved, thus avoiding the need for a costly investigation.

"Second, having 'outsiders' completely in charge of investigating misconduct would undermine the sense of responsibility within the RCMP for uncovering and preventing questionable behaviour in its own ranks.

"Third, we believe that the level of co-operation given to RCMP investigators will generally be higher than that given by members of the force to 'outsiders.'"

Later in the chapter the commission says the inspector of police practices must be allowed to exercise his judgement on when to conduct an independent investigation. Again I quote, "When a citizen is dissatisfied with the disposition by the RCMP of his complaint and brings his allegation to the attention of the inspector, the latter would decide whether further inquiry is necessary."

Finally, from the report, the commissioners also state, and again I quote: "The system we are proposing places primary responsibility for investigating and disposing of complaints with the RCMP. We believe this is necessary if the force is to take seriously the need to make changes on a continuing basis to reduce the likelihood of future misconduct and if it is to continue to be responsible for ensuring a proper standard of conduct on the part of its members. The inspector of police practices would act as a kind of safety valve in this system."

I hardly need remind members of the committee and, indeed, the public, that the McDonald commission is highly critical of the RCMP. They did not shrink from criticism where they believe it to be appropriate and yet, in the final analysis, came firmly to the conclusion that an effective process of monitoring citizens' complaints against the RCMP should remain, in the first instance, the responsibility of the RCMP. This is a commission that had hearings and deliberated for close to four years.

This was quite consistent with Judge Rene Marin's inquiry that reported in 1976 into RCMP conduct. Again, at the end of that inquiry, the recommendation, and I quote from page 85 of that report, was, "Public complaints which are not resolved informally and require a formal investigation, should be investigated by members of the Royal Canadian Mounted Police."

In coming to that recommendation, it might be worth while to quote, very briefly, from the previous page, which sums up the experience of other tribunals where the initial investigation has been taken away from the police force and given to some sort of independent board with its own investigators. Judge Rene Marin had this to say: "In our opinion there are good reasons for allowing

the responsibility for conducting internal investigations to remain with the police. In considering alternatives to the position we unearthed certain stubborn realities that could not be ignored." It's these stubborn realities that have undermined the effectiveness of other approaches to which I have just referred.

10:20 a.m.

One of the most obvious impediments to the use of external investigators is seen in the experience of investigators employed by civilian review boards in the United States. In many instances these men met with undisguised hostility, and there were cases where the police simply closed ranks to frustrate severely the external investigation. In other cases where the external investigator was a relative stranger to the police organization he was more easily sidetracked or frustrated than an internal investigator would have been.

So you see, Mr. Chairman, our legislation, our proposals are very compatible with the very thorough and carefully thought out recommendations by others who have studied the problem. I would like to describe at this time, before closing, a few of the more significant innovations that would flow from Bill 68.

First, the appointment of a civilian totally unconnected with the police force who will have complete authority to review from the outset the manner in which the Metropolitan Toronto police force responds to complaints by members of the public.

Complaints will no longer have to be filed with a police officer or with any branch of the police force. Instead they can be made directly to the office of the complaints commissioner. Any complaint filed with the police must be forwarded to the commissioner, and in all cases the complainant will be provided with a written statement of his rights under the new procedure.

Every complaint is subject to review by the public complaints commissioner or his investigators. As stated before, all will be monitored by him from the moment they are filed. Consequently, the police investigation will be conducted in the context of this independent scrutiny.

All informal resolutions of complaints as well will be reduced to writing and forwarded to the complaints commissioner for review. Every complaint can be reinvestigated by individuals employed by the public complaints commissioner 30 days after the complaint is filed. In exceptional cases, or at the request of the chief of police, this independent investigation could commence as soon as the complaint is filed.

Where the complaint is investigated by the police complaints bureau the complainant and the public complaints commissioner must be given written reports of the investigation every 30 days. The present practice of suspending complaint investigations because of co-existing criminal proceedings will be ended.

When the investigation is completed the complainant and the public complaints commissioner will be given the final

investigation report. This report will be in a standardized format and will contain summaries of witnesses' statements, copies of forensic reports and other relevant matters.

The chief of police must advise the complainant and the public complaints commissioner in writing of the disciplinary response to the final investigation report, whether that be criminal charges, internal disciplinary proceedings or no action.

If the complainant is unhappy with the decision of the chief of police he can request a review of the matter by the public complaints commissioner, who has complete powers to obtain any relevant information pertaining to the complainant's case. After reviewing the matter the public complaints commissioner can, in any case, order a public hearing. In major cases this hearing will be before a board of three commissioners. In minor cases, one legally trained commissioner will conduct the hearing.

In all cases the hearing will be public. The complainant will be entitled to be represented by counsel, as will the officer involved, and there will also be an opportunity to cross-examine witnesses. The tribunal will have the power to impose disciplinary measures. In serious cases the civilian tribunal can dismiss an officer from the police force.

Members of the committee know that this is by no means an exhaustive list of the improvements provided by Bill 68. I just want to stress the fact that what we have attempted to do is to include the best principle of the existing system, and that is the initial responsibility of the police to police themselves, with the concept, the principle, of independent civilian review, bearing in mind that the police investigators who do the initial investigation know that their investigation will be monitored and, in some cases, may be done over again. That in itself should act, I would think, as a significant influence to do a proper investigation in the first instance, knowing that it will be monitored and reviewed and perhaps done over again later on.

I think we have combined the best principles of systems that do exist without throwing out the baby with the bath water, as many of our critics have urged. My own belief is that the bill will work. I believe it will ensure that public complaints against the police are resolved impartially and fairly and that these resolutions will be perceived to be impartial by all members of the community--police officers and civilians alike.

I am very pleased that we have persuaded such a distinguished member of the community as Sidney Linden to act as Metro's first civilian complaints commissioner. Mr. Linden has had a distinguished career in community service. He is a former executive director and the first full-time general counsel of the Canadian Civil Liberties Association. He has lectured in law at Ontario universities, and is a former vice-president of the Criminal Lawyers Association. As well, Mr. Linden is an approved labour arbitrator, both federally and provincially, and has worked as a criminal lawyer in this community for many years.

I was disturbed by some comments that the announcement of Mr. Linden's appointment in July was somehow a roadblock to the deliberations of this committee, and that it indeed circumvented the privileges of this committee. That, of course, is simply not the case. I said at the time that the establishment of the office would in no way inhibit the discussion of Bill 68 in either the committee or the Legislature.

One thing of which I think we can be relatively sure is that there has been no disagreement as to the need for or the desirability of establishing the office of a civilian complaints commissioner. Again I repeat that, with or without this legislation, it was the intention of the Metropolitan Toronto council to establish such an office. Obviously, an office will be much more effective if it has this legislation. But it was a decision that was made by the Metropolitan Toronto council to establish such an office, and I would suggest to my colleagues in the Legislature that we in the Legislature don't have the right to prevent them from so doing.

I want to emphasize that the Metropolitan Toronto council had made this decision as long as three or four years ago, and I think they regret very much that they waited so long for the provincial Legislature to act. I think it was therefore wise to appoint Mr. Linden, who is still available, and to let him get on with the job of establishing his office, pending passing of the legislative framework within which he would work. Again, I think Mr. Linden has demonstrated to a number of sceptics that the government is, of course, determined to appoint somebody who can make the system work. Whatever legislation is provided, obviously the success or failure is going to depend largely on the people who are running it.

I am happy to note that Mr. Linden has been able to hire some investigative staff and that we have been able to locate office space, actually in the same building occupied by Ontario's Ombudsman, which is centrally located in downtown Toronto and is highly accessible to the public. Quite apart from any legislative structure, I have always believed that any system of independent review will depend on the quality of the individuals and on the mutual trust, co-operation and good faith of the parties involved.

I would also like to remind all interested parties that this legislation, which at this time affects only Metropolitan Toronto, is not chiselled in stone; it is a pilot project. Unlike some of our critics, I do not pretend to have the ultimate wisdom on this issue. The bill can be fine tuned at any time, but it has a life span of only three years. If it has not produced a fair, effective mechanism for resolving complaints against the police we will examine further alternatives.

It is also important to remember that about 90 per cent of all complaints now received by the Metropolitan Toronto police department are at this time resolved informally. We as a government are not prepared to construct barriers or unnecessary impediments that would interfere with that ongoing process, which is so vital to maintaining any degree of harmony within the community.

10:30 a.m.

Mr. Chairman, I am satisfied again that Bill 68 will work if it is given an opportunity. This legislation is carefully conceived to serve the best interests of all citizens. I believe it can be a milestone in the history of police-community relations.

Thank you for your attention.

Mr. Chairman: Thank you, Mr. McMurtry. Has the official opposition critic any questions?

Mr. Breithaupt: Mr. Chairman, at this point I think we would prefer to have the various presentations made by organizations. I would expect when that has been completed we will make a statement of our views concerning the kinds of amendments we would like to see and referring them to the comments that have been made by those who will be appearing before the committee.

Mr. Chairman: Mr. Breithaupt, just before you came in the committee did by consensus agree to about a 15-minute extension for comments. Mr. Philip and Mr. Williams wish to speak--brief comments, not positions, not formal statements, but very brief questions. Do you have any, Mr. Elston?

Mr. Elston: No. I'll pass at this particular time.

Mr. Chairman: Fine. Mr. Philip?

Mr. Philip: I notice with some concern that on page 20 the minister has taken the kind of cheap shot that I think is unbecoming to this committee. He states, "Unlike my critics I do not pretend to have the ultimate wisdom on this issue."

Hon. Mr. McMurtry: I said "some of my critics."

Mr. Philip: I would like to state that we do not pretend to have the ultimate wisdom on this issue, but the minister has certainly shown that he does by his announcement this summer that a citizens' complaint bureau would be set up, along with the appointment of a person to head it. The announcement certainly may have undermined the credibility of the bureau. We admit that Sidney Linden, the newly appointed police commissioner, has publicly stated that he won't review any complaints until the legislation is in place. But at the same time he stated that in the interval he will be developing procedures. It is some of those procedures that some of the groups and people who will be coming before this committee will be dealing with.

This committee has experienced numerous occasions in which the Solicitor General has shown contempt for the committee. Mrs. Campbell, the former member for St. George, has pointed this out to him on numerous occasions, and in my opinion he has once again shown that kind of contempt for the parliamentary process. There is absolutely no reason why he had to take that position, why he had to go ahead with the organization before this committee met. I want to register my complaint to him.

I will not deal with all the various points he has made in his brief, because I'm anxious to hear the briefs by the many groups that are coming before us. But I would like to say that the minister leaves the impression that the overall experience in the US and Britain is on the side of the way he wants to proceed with his bill. That is simply not the case. Some of the cases he will cite are completely different from the Canadian experience. The police are organized in different manners. In some instances the police are highly politicized, and there has been evidence of corruption in some of those jurisdictions where a citizens' review system did not work.

That is not the case in this municipality. Our police, by and large, have not operated in that manner, and therefore those US experiences that the minister would like to quote are not relevant to our situation. Furthermore, he chooses to ignore some of the more recent experiences in Great Britain, in particular studies showing that in the Northern Ireland situation the traditional form of police complaints system may not have worked, and a more innovative or democratic and open method may be more in order.

He has failed to deal with the Chicago situation, where the kind of system we would feel more comfortable with is accepted, not only by the public but also by the police. I simply want to put those views on the record. I will deal with them in greater depth later in the debate.

Hon. Mr. McMurtry: Could I respond briefly to that? I think it is unfair of the member for Etobicoke to suggest that because I disagree with him on occasion I am being contemptuous of the committee. The fact of the matter is that he somehow would suggest or characterize disagreement as being contemptuous. The truth of the matter is that I find many of his statements simply foolish but, again, we can disagree.

I find some of his opening remarks rather foolish once again. For example, Metropolitan Toronto had specifically requested that an office be established with or without legislation, and Mr. Linden was appointed in order to accede to the request of the Metropolitan Toronto council. I am suggesting that perhaps the member for Etobicoke has been a little contemptuous of the municipal council when he suggested--for some reason that he has yet been unable to explain--we should have refused or somehow prevented them, with our co-operation, taking that step.

I would suggest that when it comes to doing his homework I will not debate everything in what he said, but I think the Chicago system is a pretty good indication of how little homework he has done on the issue. If he would go to Chicago he will appreciate that the so-called independent investigative body in Chicago is actually civilian investigators who report directly to the chief of police, who are hired by the chief of police and are under his day-to-day control. They are characterized as civilians but the whole system comes directly under the control of the chief of police. I just do not think that system would be acceptable to the critics of this bill.

I would suggest that perhaps the member might look at some of these issues a little more closely, because I think that is a clear example of what would obviously be totally unacceptable because it would really be very little different from the present system. What we have here is establishing a truly independent body which is totally different from what has been established in Chicago, which is not independent at all.

Mr. Chairman: Mr. Minister, I think rather than let this get out of control at the very beginning, Mr. Philip, would you like 60 seconds to reply and then we will carry on with Mr. Williams.

Mr. Philip: Mr. Chairman, what is under debate is not whether the Attorney General or the Solicitor General and I disagree. That is not what I found contemptuous. I agree with his right to express his views or any other views, no matter how foolish they may be at times, at any time and at any forum. What I disagree with and what I find contemptuous on his part is that he has proceeded with a matter that is before this committee at this time. That is where he is in contempt of this committee.

Mr. Chairman: Thank you, Mr. Philip. Mr. Williams?

Mr. Williams: Mr. Chairman, in view of the unusual circumstances under which this investigative body has been established prior to the legislative framework being put clearly in place, I am wondering whether it would be appropriate at some point in our deliberations--because I do not see Mr. Linden's name down as one who would be appearing before the committee--to have him come before the committee to explain what type of preparatory work he has been doing, and what type of response his committee as it stands at the present time has had since it was established.

I wonder whether it would indeed be appropriate to have him come before the committee for that purpose, perhaps after hearing from all the witnesses we have on our agenda at this point. Perhaps the minister could assist us as to whether he feels that might be helpful to the deliberations of the committee.

10:40 a.m.

Hon. Mr. McMurtry: That is certainly the decision of the committee. Mr. Linden would, of course, be quite happy to appear before the committee if that were the wish of the committee.

Mr. Breithaupt: Mr. Chairman, on that particular point I think we might be in a somewhat awkward position if, for example, we expect Mr. Linden to defend the bill as opposed to the Solicitor General and his advisers. I would be very pleased to have Mr. Linden come before us to discuss his background, the studies he has done and how he sees the system working. I think it would be most awkward and perhaps compromise him if he was put in a position of having to defend the bill as the commissioner.

Mr. Williams: I just want to clarify that. I clearly stated the purpose of his coming before this committee was to indicate what his experience had been in setting his investigative

body into operation. I agree that certainly he would not be coming before the committee to comment on the merits of the legislation. I think that would be putting him in an untenable position, but it might be of interest to know what has happened since he was named to this position and what he has been doing to try to give effect to it within the limited legislative powers he has at the moment.

Mr. Breithaupt: I think it would be very helpful.

Mr. Chairman: Does the committee wish the clerk to contact Mr. Linden with regard to appearing at some point?

Mr. MacQuarrie: Mr. Chairman, I would be opposed to having Mr. Linden appear before the committee. The legislation that ultimately will emanate from this committee and from the House is the legislation Mr. Linden will be working under. To have Mr. Linden appear before the committee now to directly or indirectly get into--we know his own merits, as have been outlined in the statement, and they are available certainly for everyone to determine outside the committee. I would think there would be every likelihood that he would be asked his opinions on the legislation and I don't think he should express any opinions on the legislation at all. Whatever legislation passes this committee and the House is the legislation that he is obliged to work under.

Mr. Breithaupt: I think Mr. MacQuarrie is correct if we were in a situation where someone was appointed after the legislation was in place, but unless we can get some comments as to the experience resulting from the last several months--which may be otherwise available through the Solicitor General, it's true --then I don't know who else can provide it to us. We are in the usual problem situation where a commissioner whose appointment is made after the legislation--and of course you are entirely correct that this is going to be a problem or could unfortunately be one if he comes before us, and yet I would also like to receive some information on the experience as to how things have gone in these couple of months. If we can get it in some other way, that's fine.

Mr. MacQuarrie: I started out in full agreement with you, Jim, because I thought you were making substantially the same point. I was wondering whether we could get a report from Mr. Linden as to what has gone on to date and what in effect was done, but to have him appear as a witness before the committee could well put him in a position of potential compromise.

Mr. Chairman: We are running behind time, an ill-omen for these sittings. May we have brief comments from Mr. Elston and then Mr. Mitchell, and then the chair would entertain the question or a motion without further discussion as to whether or not the clerk should invite Mr. Linden to appear before us.

Mr. Elston: Mr. Chairman, I just want to comment that in July, when Mr. Linden's appointment was announced, the Solicitor General did make the point, a major point, that in fact the appointment of Mr. Linden would give the committee some benefit of experience he could provide in terms of his setting up. It would be appropriate later on in the sittings that we do see Mr. Linden

so that we can see what his experience has been. Perhaps we should make a decision on that right now and later on in the proceedings we should call him in.

Mr. Mitchell: Mr. Chairman, my comments are somewhat the same as Mr. MacQuarrie's. I certainly would not want to see Mr. Linden brought in early in this discussion. I have a feeling that it could very well put him in a difficult position.

I would agree with Mr. Elston that after we have gone through the deliberations and the hearings currently scheduled, during that time frame we as a committee and each one of us individually will probably resolve whether we feel the necessity of bringing Mr. Linden still exists. If that is the case, I am sure this committee would be only too happy to hear Mr. Linden, based solely on the points raised by Mr. Williams and Mr. Breithaupt.

Mr. Chairman: Mr. Linden would of necessity come in after Monday, October 5, or later by the schedule. So the schedule will take care of that.

Mr. Mitchell: It would be more appropriate after all witnesses.

Mr. Chairman: The chair will entertain a motion from the committee now.

Mr. Williams: With that thought in mind, could we simply leave it in abeyance and see how the hearings proceed? Perhaps next week we would know the appropriate time to bring him in or to obtain the information from other sources.

Mr. Breithaupt: That's fine with us.

Mr. Chairman: Looking around, that is the consensus.

Mr. Wrye: Mr. Chairman, this is more in the way of a question through you to the minister. I note the minister's opening statement has raised some questions which might better be dealt with after we have heard some of the other witnesses. Is it the minister's intention to reappear near the conclusion of the committee's hearings to answer questions in detail, or will he be sitting through clause by clause?

Hon. Mr. McMurtry: I will certainly be available for as long as the committee wants to engage in any direct dialogue with me. I will make myself available for that. I will be present from time to time when I can during the committee's deliberations, not to participate in discussions but just to keep in touch with what is going on. When I am not here, I will be reading the deliberations in Hansard and following it in that respect. I will be here during some of the clause by clause, but I emphasize that I am prepared to make myself available for any number of questions the committee may want to direct to me personally.

Mr. Chairman: The first set of witnesses are Messrs. Pitman, Borovoy and Strader from the Canadian Civil Liberties Association. Mr. Borovoy, are you the spokesman?

Mr. Borovoy: Yes I am, Mr. Chairman. I would like to introduce my two colleagues. On my immediate left--geographically that is, not necessarily politically--is the recently elected president of our organization, Walter Pitman, and on my immediate right is our research director, Allan Strader.

10:50 a.m.

Rather than read the entire brief, perhaps I should begin this way. I was impressed by a writer who recently said that one of the key factors in human life is the boredom factor and it is probably one of the greatest neglected factors. Fully mindful of that, I thought that as between the two ways of boring you it would be less boring if I were to speak to the brief rather than read it in its entirety.

The introduction sets out something about our organization, the background and our objectives. It also tries to set the framework for the submissions that are to follow. It is to say that to the extent that Bill 68 comes on the scene as a response to so many of the controversies which have engulfed our community, to that extent at least it is a welcome initiative.

What concerns us is that after so much public rancour and controversy, the government's proposed remedy should fail so dramatically to accommodate the needs at issue. What we are then about, for the rest of the brief, is to analyse what we feel are the shortcomings of the bill, not to call for its rejection but to call, hopefully, for its improvement.

We begin with the first major item beginning on page one, the issue of independent investigation, which the Solicitor General has addressed in his opening remarks. I might say I always enjoy having, at least temporarily, the last word on him. Of course the key words are "at least temporarily."

Essentially, to the extent that Bill 68 provides for some kind of independent civilian review, it represents an improvement over the completely unpalatable status quo we now have. The difficulty with it is that it omits a very crucial component of a fair system and that is, independent investigation. In the main, the government approach contemplates a system of internal investigation monitored by external review. As we look at the bill and we look at the comments that have been made about it, what emerges is that it would be extremely rare for the public complaints commissioner--or PCC, if I may hereafter refer to him that way--to be involved in direct investigations.

Our difficulty is that so long as that is the case, the system will be severely flawed. First of all, many aggrieved people simply will not confide their complaints about the police to other police officers. Our organization has had this experience time and again. I cannot tell you how many times people have come to us complaining about police misconduct, and invariably shrunk--I should not say invariably; some of them have been prepared to take action--but the great number of them were unprepared to take further action because they did not trust colleagues of the very police officers against whom they had the complaint to conduct that investigation.

We did some surveys back in the 1970s. By now we have interviewed a few hundred arrested people. One of the questions put to these people was, did they complain about abuse at the hands of the police. Of those who did, we invariably asked the question, "Are you going to take retaliatory action?" Only a minuscule minority said they would take retaliatory action, and when we asked, "Why?" they said it would do no good.

It is interesting that we have a quote from the McDonald commission--I suppose both the Solicitor General and I have our favourite quotations from the McDonald commission, but I would like to quote another part, as follows:

"Although difficult to ascertain with any great precision, it is probable that many complainants would not have complained had our commission not existed. We infer this from the fact that many persons who wrote to us after the cutoff date, when advised that we would not investigate but that they could forward their allegations directly to the Solicitor General or the Commissioner of the RCMP, expressed the view that such action would inevitably prove to be useless."

Since so much depends upon the willingness of aggrieved people to take the initiative, we suggest that a great number of complaints are likely to be stillborn at the outset. With the greatest respect, that is the one issue, of course, that this new pilot project cannot hope to measure; that is, the number of complaints that will never surface because people are too intimidated and they simply don't trust the system right from square one.

In addition to the difficulty about potential complainants, the problem is that this system is not likely to enjoy sufficient public confidence. I had paused because I noticed the moving microphone in front of me and I was afraid that perhaps I was suffering from some other delusions.

Mr. Wrye: But not boredom.

Mr. Borovoy: At least not that. The difficulty, as far as the public is concerned, is members of the public will realize that the PCC is going to be dependent essentially on the investigation reports that he gets from that internal investigation. It would take clairvoyance to spot the defects in many of those investigation reports. That is the problem with it.

So what we come back to, in order for the PCC's attention to be drawn to any of the inadequacies in those investigation reports, again the initiative is going to have to come from the very aggrieved people who, we suggest to you, are the ones least likely to be counted on to press these things; a) they are unlikely to go in the first place; b) even if they do, you can't depend upon them to keep pressing. With the greatest respect, this system depends upon them to do precisely that. Otherwise, you have to rely on the PCC to be able to spot the difficulties in the investigation reports.

I, for one, have great confidence in Mr. Linden. The record should note that I am smiling when I say this, one could almost say it was a dirty trick of the Attorney General to appoint one of my predecessors in this job and then challenge us to come forward and criticize it. As much respect as I have for Mr. Linden--and I do--he is not clairvoyant. That is the problem of his having to peruse many of these investigation reports.

11 a.m.

Where the bill would allow the PCC to conduct his own investigations at an earlier stage, it has severely encumbered his discretion to do so. First, it indicates there has to be "undue delay or other exceptional circumstances"--whatever that may mean. Query whether the words "other exceptional circumstances" are to be construed, if you will forgive the Latin pretension, ejusdem generis with undue delay, which means of course, does it have to be another kind of undue delay. I am not sure what those words are designed to mean. If that is not enough, this is one of those sections in the bill that is made explicitly subject to judicial review, as some of the other sections may not be.

One wonders at the insecurity of an arrangement where, first of all, you encumber his discretion so severely, and if that is not good enough, make it explicitly subject to judicial review. That is something like an old friend of mine once said, "You are so insecure that you put on a belt and suspenders and then go around holding up your pants."

One of the problems is what can the chief of police do. Suppose the chief of police was not happy about one of those rare initiatives that the PCC decided to take. Could he frustrate the entire operation simply by initiating court proceedings, and in that way suspending the PCC's investigation? Let me suggest at the very least, how much is likely to be lost? If we are trusting Mr. Linden so much, then why not, at the very least--and I make this only as an alternative argument, certainly not the central one--let him decide and leave his discretion unencumbered by the possibility of this kind of judicial review? After all, how much is going to be lost if the PCC makes that judgement? But I suggest a lot may be lost if court proceedings frustrate his ability to do so. Even if he turns out to be right, the proceedings might grind to a halt simply by the fact that the chief of police has applied to court.

In our view, what it all comes down to is that a system essentially of internal investigation, even if monitored by external review, cannot adequately address the problem which has occasioned the impulse for reform, namely, the perception of bias. No matter how fair an internal investigation may be in fact, it is not likely to appear fair. From the standpoint of many members of the public, the investigating officials would continue to be vulnerable to the suspicion that they were covering up for their colleagues or fellow police officers. From the standpoint even of many accused police officers, the in-house investigation would continue to be vulnerable to the suspicion that internal jealousies and considerations of public relations could prevail over the interests of scrupulous fact-finding.

A number of commentators, including the Solicitor General as I heard his comments this morning, have suggested that outside investigators would not be as effective as internal ones for the job of penetrating the police bureaucracy. According to this argument, only the colleagues of impugned officers would be likely to get the crucial information from them. Rarely are these kinds of arguments based on facts. Usually they are based on intuition. The most important of the recent royal commissions into police misconduct have relied exclusively on outside investigators. The Morand commission on Metro police practices used outside, independent investigators. The McDonald commission used outside investigators. Indeed, when the then chief of police was faced with the recent shooting of Albert Johnson, he asked the OPP to investigate. He realized that an internal investigation could not possibly satisfy the outrage and anxiety that existed in the community.

The proposal for independent investigation has also been attacked on the grounds that it has not worked in places like the United States. There is some truth in that. But we must look at the political situation of the United States. The racial strife in the United States has produced a situation of political polarization that, I submit, has very little counterpart in this country. In fact, what happened in those cases is that it was the avowed policy of the police brotherhoods, from square one, to scuttle the independent review mechanisms which were created in that country. That was their policy. They tied them up in court hearings.

Whatever disagreements Canadian police have with the notion of independent investigation, I submit that they are unlikely to behave the way the police in the United States behaved. Indeed, a few years ago, the Metro Police Association made common cause with the Canadian Civil Liberties Association. We went hand in hand to visit one of Mr. McMurtry's predecessors in the role of Solicitor General and together their organization and our organization requested a completely independent system of investigation. That should not now be forgotten. Even if their policies may have changed since the time they made common cause with us in that submission, what it illustrates is the wide gulf between the Toronto police and the American police.

On the basis of all of these considerations, we submit that this committee ought to amend the bill so as to provide for the completely independent investigation of all civilian complaints against the police.

I might just respond to one other point that Mr. McMurtry made in this connection earlier this morning. When he says he does not want to "provoke an adversarial kind of proceeding," with great respect, there is, even if we would wish it otherwise, an adversarial relationship, a conflict of interest, between those who complain and the police department receiving the complaint. As much as we might wish it otherwise, the conflict of interest cannot be wished away. I submit that it is a more productive and creative response to establish institutional mechanisms which reflect these realities rather than those which try to submerge them, paper them over and thereby provoke in the community the kind of suspicions and anxieties that have brought us even to the point that we are already.

I would like to go on now to deal with some of the other points of the bill. The first, we have under the heading "reducing double standards." There are many examples in the bill of double standards, some of which, hopefully, may be inadvertent and if they are drawn to the attention of the legislative draftsmen we might hope that changes could be made quite easily. Others may be more advertent and may require a little more diligence on the part of this committee to correct. You will note how selective I am in the terminology I employ for these purposes.

Mr. Breithaupt: Less inadvertent.

Mr. Borovoy: Yes. Less inadvertent. Thank you. I adopt that completely.

First of all, we note that findings of misconduct against police officers will require proof beyond a reasonable doubt, the same standard that is used in criminal cases. Here, of course, we realize that losing your job or being disciplined on your job is quite a serious matter, but no one else in our society, when his or her job is threatened, is entitled to proof beyond a reasonable doubt before a finding of misconduct can be made. Why should police officers be entitled to this unique solicitude?

11:10 a.m.

Of course, we should also remember that what we are talking about is a position of public trust--their right to hold a position of public trust. If police officers are charged with criminal offences, were they to face a possible loss of liberty, they like everyone else, of course, in those circumstances ought to have the benefit of proof beyond a reasonable doubt. But when the issue is not their right to walk the streets as free citizens but the right to hold a position of public trust, we suggest that it doesn't make sense to use the same standard. It isn't used anywhere else, it ought not be used here either.

I go on from there to another double standard. We note that the bill will permit the Metro Police Commission and police association to effectively nominate one third of the personnel of the new independent police complaints board. Why should they have that special opportunity? They will often represent the implicated interests before the police complaint board. If the implicated interests have that right, why shouldn't the aggrieved interests have that right. No one is suggesting the racial or ethnic minorities have a special right to nominate people or that complainants should be able to nominate people, even if there were a practical way to do it.

I am not necessarily making that recommendation but I am simply pointing out that you have a double standard. It is one thing to choose people for a board who may have some police training, some understanding of these issues, but it is another thing to choose people who have police loyalties, so that you will have one third of the board, unlike all the others, who will owe an essential loyalty to some of the very interests that will be implicated before hearings of that board. Our suggestion to you is that is an improper, inadequate arrangement to have in a bill of this kind.

Another double standard, we note, in the powers of the PCC. When he has investigative powers, among his powers will be to go into police stations and examine materials there. Why can he only do it after he informs the chief of police? I do not know anyone else in our society who may be subject to this kind of entry to their premises for purposes of enforcing a law where the implicated interest has to be especially informed before they are entitled to go.

It may be a courtesy that he ought to observe very often, but why should he be legally bound to do it in all cases, even conceivably in some cases where it might prejudice the investigation? In the way the bill reads, even if the police chief himself were under investigation, presumably he would have to be notified before the PCC could go on the premises. That is something unique this bill would give that we suggest really is unnecessary in the circumstances.

Section 19(4) would permit the police officer under investigation to examine any written material that is slated to be used in evidence at the hearing. We have no necessary objection to that, though it hardly exists in lots of other statutes. But why not also give that opportunity to the complainant? Why not try to equalize the proceedings as much as possible?

We note that unless the police officer under investigation consents, a disciplinary hearing may not admit into evidence any statement which he has made--which he has been required to give in response to a complaint. Here again we have a rather unique situation for police officers. If an auto worker or a steel worker were required under threat of discipline to answer the questions of his superiors, there is nothing I know of in the law which would prevent the admission into evidence of that auto worker's or steel worker's statement at any arbitration case which is dealing with his discipline or his discharge. If his statements can be used, why not the statement of the police officer?

I can well understand, in fact, because of the special vulnerability of police officers to accusations of a criminal nature, I think it would be fair that those police officers should be protected against the use of those compulsory statements in criminal prosecutions where they may be the accused. There would be a case for treating police officers differently because they are especially subject to these kind of allegations and charges.

I submit there is a strong case for going after the federal authorities--unfortunately, I don't think you have the constitutional power to make that change--but I do think you ought to go after the federal authorities and try to get legislation enacted federally that would make such statements privileged against those police officers in the context of criminal trials. But I submit to you that there is no basis for excluding those statements in the context of disciplinary hearings.

We come to the section called, Modifying the Powers of the Chiefs of Police.

Mr. Breithaupt: Before we do that, Mr. Chairman, could Mr. Borovoy just comment upon the application of the Ontario Evidence Act with respect to this area and whether protections with respect to disciplinary hearings might be resolved in that way since we are on that point?

Mr. Borovoy: I don't think so. Both the Canada Evidence Act and Ontario Evidence Act may apply but they would apply in the situation where he is testifying at a hearing, so that were he testifying at a disciplinary hearing he might then be able to invoke the protection of those statutes against having that evidence used against him at a subsequent hearing. But what I am talking about is a prehearing statement that he may be required to give his superiors on the investigation of a complaint. Those statements would not attract that privilege.

I am suggesting that if he is required to give them as a virtual condition of employment, they ought to attract that protection but I would use the statements in the disciplinary hearings. I think that is the much more appropriate way to balance those competing interests.

As far as the powers of the chiefs of police are concerned, we note that among the many options when he receives an investigation report, is to cause disciplinary proceedings to be taken under the Police Act. He can do that or he can refer the matter to the police complaints board or take a number of other measures.

One of the problems with taking proceedings under the Police Act is that the PCC and the complainant may not have, as a right, the opportunity to appear in those proceedings as parties. Our suggestion is--hopefully this is one of those oversights that could be corrected--that whatever the police chief recommends by way of subsequent hearings, unless it is a criminal prosecution, the PCC and the complainant be entitled to participate as parties.

11:20 a.m.

Also, we note the chief is required to give written reasons if he decides not to take any action. But if he decides only on a mild rebuke or a caution, he does not have to give written reasons. Our suggestion is, if he takes any position that is likely to find disfavour with the complainant--that is, anything that falls short of something that could culminate in a hearing--he should have to furnish written reasons for it.

We now come to the powers of the new independent agencies. We note that in section 7 the requirement to immediately tell the officer under investigation the substance of complaints against him can be waived by the internal police complaint bureau if the head of the bureau taking the complaint thinks it would prejudice the investigation of the complaint to advise the officer. In view of the fact the PCC is supposed to have some opportunity, some scope for investigation, why should he not also have a comparable opportunity to waive the need to inform the officer if he believes it might prejudice the investigation to give the officer that information so early in the proceedings? In other words, it simply complements the power the internal bureau has.

We note that the PCC, when he comes to the point of determining whether there should be a hearing of a police complaints board, is governed by the criterion "if he believes that in the public interest such a hearing is required." Our submission is that this language is needlessly and unduly tight. I think our problem is that a PCC looking at that may believe the intention is that only rarely could the public interest be said to require such a hearing.

Are we not really talking about a situation where the public interest would benefit from such a hearing? Should not that language be changed to something like, "If the PCC believes it would be in the public interest to hold a hearing," then he ought to be mandated at that point to go ahead and hold it?

As far as the authority to resolve complaints informally is concerned, we note that for some reason it only arises in the bill before an investigation and not also after an investigation. It may well be that lots of times there will be an even greater incentive to resolve matters informally when the facts become known. Moreover, our suggestion is--even assuming the bill remains somewhat in its present form, as we hope it does not, but even if one were to assume it were to remain somewhat this way--there is something to be said for involving the PCC, for giving him some opportunity to participate in the conciliation process as well.

Very often, the involvement of a sensitive, skilful outsider can be enough to bring about informal resolutions. In our view, it is altogether to the good. There are lots of situations that ought to be conciliated, that should not go to public hearings, where you should not have the parties dig in a rigid way, and our suggestion is it is often much more likely to happen if you have the outsider doing it because he is likely to enjoy greater trust from the parties than the insider will.

In any event, our suggestion is that even if the matter is resolved in the inside by insiders, the PCC should not simply be permitted to review those informal resolutions, he should be required to do so. I think one of the difficulties is that the setting of internal resolution of these matters can provoke public suspicion that some of these complainants may have been unduly pressured by the police department into settling matters that they do not want to settle.

I suggest that no matter how fair and how solicitous the internal bureau may be in fact, it won't appear that way to many members of the public. I suggest the entire proceeding will enjoy a greater level of public confidence if those matters resolved internally have to be approved by the outside person, so that he has to look at this and it simply isn't left to them to do it.

As far as the powers of the police complaints board are concerned, they look to go from one extreme to another. We note that it goes, on employment, from discharge to the forfeiture of five days' pay. Our suggestion in the brief is that this may be going from the employment guillotine on the one hand to a hard slap on the wrist on the other hand. What we suggest is that there may be many things in between the guillotine and the slap. For

example, suspension without pay, which many arbitration boards impose. That may be a case of serious misconduct where there is a reluctance to dismiss, but nevertheless the forfeiture of five days' pay may not come off as sufficiently serious in the circumstances. Our view is that the police complaints board ought to have a little more leeway to resolve these matters.

We now deal with the safeguards, to try to expand the safeguards for complainants. One would be, in one case we would suggest that because so often you are dealing with some of the most vulnerable people in society, you are dealing with racial and ethnic minorities, criminal suspects, sexual nonconformists, poor people of one kind or another, they would make up a very large part of the people who would be filing complaints, who would feel aggrieved.

One of the difficulties is, as you can appreciate, that the involvement in this procedure is fraught with peril. The danger is--or at least the perception may be, and that is always so important--the perception may be, in the eyes of many members of the public, that some of the people who file complaints may be pressured, pressured into withdrawing complaints, pressured or induced, if they themselves are facing criminal charges, into making incriminating statements--potentially irreparably incriminating statements.

Because of that inherently perilous situation, and because certainly of the appearance of those perils, we suggest that the legal aid plan ought to be sufficiently broadened so that more complainants can take advantage of it and be protected as they go through this complaint system.

We also suggest that under section 6(2), where both the police station and the internal bureau that are supposed to tell people their rights when they come there, when complaints are filed with them, they be explicitly told they must advise people about their right to legal aid and their right to file complaints with the PCC. The bill should actually say that in explicit terms and not just leave that to implication.

I would now like to come to expanding the safeguards for police officers. Where the bill might have been more accommodating to police interests, in our view it has failed to do so. There are many areas where we believe the police have legitimate complaints about the working conditions to which they are subjected and the bill unfortunately--neither this bill nor any other of which we are currently aware--has not attempted to address. They arise in the internal relationship between the police and the department.

11:30 a.m.

Our suggestion to you is that the willingness of the police to co-operate with, and their whole outlook to, all these reforms could be immeasurably improved if this committee were to add a rider to Bill 68 that would address some of the very legitimate complaints that the police have had about their internal working conditions. Let me address those as briefly as I can.

First, they have no recourse to independent adjudication of their internal discipline and discharge complaints. If they have a grievance, if they are disciplined or discharged, where can they appeal? Their hearings are heard internally, their superiors hear them, they then can appeal to the Metro Police Commission, their employers, and/or they can appeal to the Ontario Police Commission, which performs a number of functions as special advisers to management of police forces. If I may put it to you, it is something like asking an auto worker to appeal beyond General Motors to the chamber of commerce.

My submission to you is that this is an unfair situation to inflict upon our police officers. We remove from them the right to strike, we make many demands on them. Our suggestion is that they ought to have at least what most unionized employees have and that is recourse to fully independent arbitration of their discipline and discharge grievances.

We also note that very often working constables are required by their superiors to furnish full and detailed reports regarding various aspects of their activities. While such a practice may be generally unimpeachable, there are some situations where their superiors will require that and where the constable will not know that what he is really being asked to do, although he is not told this, is respond to some allegations that have been made against him. In other words, it is an opportunity for the superiors to go on a fishing expedition.

We are not necessarily suggesting that the police officer not be required to reply, because he is holding a position of public trust and he ought to reply to reasonable questions concerning what he is doing, but we suggest in all fairness if there are allegations against him, he ought to know about it at the time he is invited to answer these questions so that he can make the fullest and most competent defence possible at the earliest opportunity possible. Moreover, he or she ought to have what most unionized employees have before they are required to answer the questions of their superiors, an opportunity to consult with their union representatives or with legal counsel, so that they can make the most helpful response at the earliest opportunity.

We know that very often innocent people untrained in these matters are often susceptible to making statements that could prejudice them, and if they were given a little professional advice early on they might be enabled to meet these accusations in both a fair way and a competent way at the earliest possible opportunity.

I will just deal with the last couple of issues. Improving the integrity of the system: We note the bill does not explicitly provide for who will have carriage of the complaints before hearings of the police complaints board. It is hard to imagine that it would be the government's intention that the complainant should have this responsibility in view of the cost, the pressures, the responsibilities. Probably the government intended, though unfortunately it did not specifically say so, that the PCC should carry the complaints before hearings of the police complaints board.

The difficulty is that if a PCC does it, remember he is also the chief officer of the very board before which these hearings will be conducted. Even though he is not entitled to sit on those boards when he is doing that, the fact that he is the chief officer and the fact he designates the members of the panel who sit in any particular case could very well contaminate the proceedings with the appearance of impropriety.

Our suggestion is, therefore, that the PCC should be completely separated structurally from the police complaints board. He should not be the chief officer; he should perform no adjudicative functions, and he himself should not select who does. He should be the catalyst, the review body, the activator, but that should end his official responsibilities as far as those hearings are concerned.

Finally, we note that section 22(3) attempts to protect transactions conducted under this bill from compulsory disclosure in other hearings. But Bill 68 would protect only records, reports, writings or documents. How about oral statements as well? I would think the rationale behind that would be to protect oral statements. This appears to be one of those inadvertent oversights.

Mr. Chairman, I do not know if this presentation succeeded in reducing the boredom factor. We nevertheless thank you for your patience, and we would be pleased to respond to any questions the committee members may have.

Mr. Chairman: Mr. Minister, would you like to ask a question of Mr. Borovoy?

Hon. Mr. McMurtry: Yes. I will not attempt to deal with each and every issue. First, there is a time problem. Secondly, some of the issues Mr. Borovoy has raised deserve further consideration rather than an instantaneous response. But there are some fundamental issues that have been raised. I would like, with your permission, Mr. Chairman and members of the committee, to enter into at least a brief dialogue with Mr. Borovoy with respect to some of the highlights of his presentation, and I would like to ask him some questions about my perceptions in relation to some of his comments and how the board may work in practice.

Probably the number one issue is that of independent investigation. This has been an issue for some years whenever these matters are raised. When Mr. Borovoy uses an expression such as, "It omits independent investigation," I, of course, would take issue with that bald statement although I think I know what he means. He is referring to what may be the critical initial stages. In that context he expresses concern, as others have, with respect to requiring complainants to deal with members of the police force that the individual believes has abused his rights in some way, perhaps in a very serious way.

11:40 a.m.

I would have thought that, with the opening of the independent office where you do have some complainants who just are not going to deal with any police officer on the Metropolitan

Toronto police force because of what they perceive or believe to have happened to them, would it not be open for that individual to give a complete statement--this is how I envisage the legislation working at least--to a member of the investigative staff of the PCC, indicating at the outset that they are not going to have any dealing whatsoever with a Metropolitan Toronto police investigator?

Obviously, that does place certain constraints in relation to the initial investigation, but it seems to me that a person who might wish to take advantage of that could simply give a complete statement, which might be added to during the course of the initial investigation, dealing entirely with members of the PCC. Then the responsibility of the PCC office would be, of course, to forward the details of the complaint to the police department and the police department would do an initial investigation that would not involve an interview with the complainant, if that was the complainant's wish.

It seems to me that where a complainant refused to deal with a member of the police force at all, a complete statement, again a statement which might be added to during the course of the investigation, could result in a very thorough investigation by the Metro police force without them having to deal directly with the citizen who is complaining. I would envisage that is an option open to a citizen who just does not want to discuss the issue with a member of the police force.

Mr. Borovoy: I think there are probably two difficulties with that. First, I think what happens is, the practicalities of an investigation are such that the person conducting the investigation gets a feel of it from talking to the various witnesses and that is probably a great help in his conduct of the investigation. To the extent then that those who will be charged with the key responsibility for the investigation will not have direct access to the complainant, the difficulty if you split it that way--that is, if the PCC talks to one person and the police investigators talk to others--is that you may wind up with less than the kind of investigation I think both of us would like to see; that is, it would not be the best possible investigation.

Hon. Mr. McMurtry: I would agree with that.

Mr. Borovoy: Of course, what we would then be saying to you, if you agree with that, is that if the job then is to give even those aggrieved people--I am sorry, I should not say "even"--the job is also to give those aggrieved people the most fully competent investigation they could get and they ought to have the opportunity to have that one agency do it. That, of course, would be the agency they choose to go to and that would be the independent PCC.

The second problem, I think, in the remark you made is that it assumes that the problem with these complainants is simply that they do not want anything to do with the police, that they are afraid of them, that they do not want to talk to them. That is certainly one of the problems. Another one of the problems, though, is that they do not trust the police to do a competent job. They are afraid that colleagues of the very officers against

whom they filed their complaint are going to conduct the kind of investigation that is going to favour their friends, favour their buddies.

Hon. Mr. McMurtry: They want a competent job but an unbiased job.

Mr. Borovoy: An unbiased job, that is right. I am sorry, that is right, that is what I intended to say. What I would say then is that your response does not adequately meet that problem, even as it may meet the problem of a person who does not want to talk to police officers.

Hon. Mr. McMurtry: We realize this is an issue, and I expect it will continue to be an issue, but my comments may at least be directed to your statement that a number of complaints will never surface, because at the very least an individual will know he can make a complaint about the conduct of a Metropolitan Toronto police officer or officers without ever dealing directly with the police.

Surely a large part of your concern is addressed by the fact that once people realize they can go directly to the PCC office without having to deal with the Metro police--although I agree the investigation may not be totally satisfactory if they refuse to agree--that should meet a large part of the problem. I say this particularly because I was rather concerned about the number of people I have met representing some of the minority groups in the community who raised this issue not knowing that the legislation allowed them to go directly to the PCC office without going to the police force. There is wide misunderstanding about that. Even if we do not agree on some aspects with respect to the initial investigation, at least some of the concerns are addressed by the fact that a person can go directly to the PCC office. Hopefully, you will agree this is a significant improvement over the present situation.

Mr. Borovoy: I would not like you to take too much comfort from the fact that some of the concerns may be addressed by the fact the complainant can go to the PCC. Do not take too much comfort from that because, first, as you have acknowledged, that route is not going to produce the kind of investigation it ought to. Second, the reason many people will not go and will not surface is not necessarily because they do not want to be involved with the police--although that is one factor--but because they do not trust the police to do the kind of job they want them to do.

To say some of the concerns are addressed, I submit, really represents a rather inadequate response to a very major criticism of this approach.

Hon. Mr. McMurtry: Dealing with this major criticism, what is curious is that so many people have looked at this critical issue--we have Mr. Maloney, Judge Morand, Cardinal Carter, the McDonald commission, the Parliament of Great Britain--and they have all come to the conclusion, after very exhaustive study and lengthy hearings for the most part, that unless the police do the initial investigation the system will not work. I am curious as to why you reject all of this collected wisdom, in effect, out of hand.

Mr. Borovoy: There is a very peculiar thing about that collective wisdom. It is interesting that you point to the recommendations they made and yet some of those same bodies, when given the choice as to how to handle their own investigations, selected outsiders.

Hon. Mr. McMurtry: They accepted police officers for the most part.

Mr. Borovoy: No, with respect, they were not people who were involved in the police forces under investigation.

Hon. Mr. McMurtry: They were police officers, for the most part.

Mr. Borovoy: Some were and some were not. The crucial factor--and incidentally, we have never opposed necessarily the use of former police officers for some of this work. What we suggested is that people who have departmental interests to protect not be involved in this. What we are suggesting to you is that every one of those commissions to which you refer, when they had to make a judgement as to how to handle their own investigations, adopted the very model we are recommending to you here.

11:50 a.m.

Hon. Mr. McMurtry: I could not disagree with you more. With all due respect, that is a distortion of what occurred. All of these bodies have looked at this issue very closely and very comprehensively, and they significantly disagree with you as to the model that should be established because of the very nature of policing.

What troubles me with your approach is it appears to be based on a principle of attributing bad faith to police forces; based on a principle that police forces are not going to wish to root out the bad apples; that they will not wish to get to the bottom of some of these problems. All of these commissions have come to the conclusion, after exhaustive studies for the most part, that in the final analysis only the police themselves will be able to maintain a system of law enforcement that truly serves the public. And essential to serving the public is the maintenance of internal discipline, which requires their opportunity to do an initial investigation. That is the significant finding of all these bodies.

Mr. Borovoy: Mr. McMurtry, I will be more gracious than you and not accuse you of a distortion but rather of a misconception of our position. Our position is not based on the inevitability of bad faith on the part of the police who do this; it is based upon the inevitability that the public will perceive the problem as one where police officers may be tempted to favour their colleagues against outsiders.

Though--as you realize--regrettably there is bad faith from time to time, and there have been some rather unfortunate examples of bad faith, our basic concern is that our system appear fair and

that people be satisfied they will get the fairest possible investigation. I should say now, while you are wrapping yourself in the big brothers of the McDonald commission and the Marin commission, my big brother, the president of our organization, wants to say something about this.

Mr. Pitman: Mr. Chairman, Mr. Solicitor General, you may be aware that some years ago I had the opportunity of doing a report for Metro Toronto and it was on the question of racial violence. It related, essentially, to the difficulties one group, the East Indian people, were having in Toronto. I did have an opportunity to investigate the Metro Toronto police as part of that report.

I would go this far, leaving aside the question of all the other jurisdictions which may or may not be ready for this kind of an approach, for an independent body, as to say I think the Metro Toronto police are ready. In a sense our submission is an indication of our trust and faith in that police force. Certainly in my investigation I came to the conclusion that we had a first-class police force in Metro Toronto in spite of all the complaints, the concern and tensions, and that this community was ready for a different kind of policing, and as a result of that, a different kind of complaint process. In a very real way this submission is a vote of confidence that Metro Toronto and its police force are ready. It is not a judgement on that police force but a challenge.

We are moving into a society in which policing is going to change quite radically. It is going to be less punitive in its operation, less military in its style. It is going to be more sociological, more psychological, more educational and more service oriented. It would seem to me the kind of complaint process which we have put forward here this morning is one which would fit a new kind of policing. If it is carried out by bringing along the police, giving them confidence and giving them some sense that the community is supportive of these changes that are being made, I think it presents a tremendous opportunity for Toronto, Ontario and Canada to make a leap forward in the way in which we are carrying out our policing function in what is becoming a much more complex society. With that, Mr. Chairman, I am afraid I have to leave to carry on my business in another part of this province.

Mr. Borovoy: He leaves me to defend that.

Hon. Mr. McMurtry: Just before our friend Mr. Pitman leaves I would like to state the dilemma that I face in this issue. This is an issue that has been debated over the years; it is not something that has just come up with this bill, as you know.

You have characterized the Metropolitan Toronto police force as a very fine force, and I am sure they will appreciate your complimentary remarks very much. I think this is important to morale. But that is certainly part of the dilemma. We have, basically, a very good police force.

In my view as Solicitor General, as Attorney General, as somebody who has been on both sides of a number of these issues over the past 25 years, the reason for this is that there is a fairly well structured and highly disciplined internal system of discipline. The senior officers, not only of the Metropolitan Toronto police force but of all major police forces, believe that in order to maintain this type of discipline, in the interests of the public it is absolutely essential that they retain the responsibility, in the first instance, to police themselves.

My dilemma is that in order to create a more favourable perception in some quarters with respect to citizens' complaints against the police--this is my firm conviction, and I realize that reasonable people can always disagree on these things--to take away that responsibility in the first instance would be to substantially undermine a police force that has generally served the public in this community very well. That is a reality of the situation in my view, as well as a perception.

I realize I do not answer what you have had to say but I just wanted you, a highly respected member of this community, to know before you left, Mr. Pitman, that that is what I see as the essential dilemma in this particular issue.

Mr. Borovoy: Perhaps I can respond this way to you. When Mr. Pitman talks about the fact that our police force in this city has largely been a good police force, we must also recognize that where the problems have occurred, where the defects in that image have arisen, have been precisely in the area where members of the public have been drawn into conflict with that police force. It is in that area that the otherwise good reputation has suffered substantially over the past number of years.

I think we have to appreciate that there is, like it or not, a conflict of interest between the police department and the civilian who makes the complaint. The police department has an interest in coming off looking good. That is an interest that they have. The civilian who complains knows this. The public knows this. So even if that complaint is investigated as fairly, as competently, as fully as one could hope, the entire proceeding is contaminated in the eyes of many members of the public.

12 noon

Incidentally, I do point out that not all of those investigations have in fact been conducted that well; many of them have been conducted quite badly. But even in those that may be conducted well, what we can't get over is the fact that those conducting the investigation have a conflict of interest, have interests in conflict with those who filed the complaint. Your approach regrettably does not adequately address that problem.

Hon. Mr. McMurtry: We live in the wonderful world of politics. I have to agree with you, Mr. Borovoy, we have to live with perceptions as much as we have to live with reality. I don't in any way discount the importance of the perception as well as the reality. I guess all of us have a responsibility to perhaps communicate a more accurate perception sometimes.

I don't question that some citizens feel that way, and yet I wish those same citizens were aware of the number of police investigations that go on in the Metropolitan Toronto police department every year that lead to criminal prosecutions, some very serious criminal prosecutions and even dismissals; although not a large number considering the number of men on the force. I think the internal investigative process does demonstrate that the police in this community, when it comes to investigating themselves, have been pretty vigilant and vigorous.

Mr. Borovoy: I think those comments rather overlook a crucial distinction. Some of those investigations, to be sure, have been conducted quite well, but very often you are talking about situations that have not been activated by someone who has had an adversary relationship with the police department. You are talking about other types of investigations.

There may be, from time to time, the most thorough investigations conducted when some police officers may be suspected of some criminal conduct, but it is not done as often when we are talking about a complainant himself who has been involved in conflict with the police department. There you have not had quite the same kind of response as you have in the kind of cases you are talking about. I think your remarks tend to gloss over that rather important distinction.

Hon. Mr. McMurtry: There is admittedly some distinction there. I have a little bit of a time problem too, Mr. Chairman, and there is one other issue that is of concern to me. Mr. Borovoy gave full recognition to the importance of mediating these disputes, avoiding confrontation where possible--recognizing that it is not always possible or necessarily always desirable to avoid confrontation--and that the importance of mediation and conciliation may not only be before a full-scale investigation but, if I understood your comments correctly, perhaps in some cases after a full-scale investigation in the public interest.

Another of my concerns is whether, given the fact that apparently 90 per cent of these complaints are resolved informally to the citizens' satisfaction, you would not be concerned that this would not be possible if, in the first instance, the investigation were to go to a separate civilian review type of investigative board without giving the police any opportunity to an internal investigation.

Are you not concerned that that would significantly reduce the number of complaints that could be resolved informally? Once you go the route of the independent investigation, certainly the experience in other jurisdictions has been that that in itself creates an adversarial atmosphere which does make conciliation-mediation very difficult.

Mr. Borovoy: I would suggest the contrary. The prospects for successfully conciliating these matters would be enhanced rather than reduced by the early involvement of outsiders. In fact, rather than go to other jurisdictions, let me suggest that we go to another ministry in this jurisdiction. May I be so unkind as to refer you to the experience of the much beleaguered Ontario

Human Rights Commission, which in many areas has been highly successful over the years in conciliating complaints between complainants and respondents in situations where it would have been much less likely to happen had the very people whose conduct was impugned been required to do that job. The involvement of the skilful outsiders is more rather than less likely to do it, and indeed one of the best experiences that the unfortunately short-lived civilian review apparatus in Philadelphia had was the great number of cases they settled, precisely because the aggrieved people were much more prepared to trust the independents than they were the colleagues of the officers they were accusing of misconduct.

Hon. Mr. McMurtry: Mr. Chairman, I apologize to Mr. Borovoy and the members of the committee. Last June, a luncheon involving a number of religious leaders, who I think want to talk about this very bill, was arranged for today. I will try to be back later. I would like to apologize particularly to Mr. Borovoy because there are a number of issues I might like to discuss with him at this time. We will certainly have the opportunity of considering all his submissions very carefully. Occasionally, we do not agree, but I always appreciate the very effective and articulate manner in which Mr. Borovoy expresses his views. There are undoubtedly some areas, I should say at the outset--

Mr. Borovoy: Maybe you should stop at that point.

Hon. Mr. McMurtry: --that we will take a good look at. I would like to thank him for his presentation.

Mr. Chairman: Thank you. We will see you this afternoon, Mr. Minister. Mr. Elston, I believe you wished to make a few remarks.

Mr. Elston: Just a few very brief comments. First, Mr. Borovoy, we have heard a very good, very persuasive presentation. I want to expand into a couple of particular areas you dealt with. What we are dealing with here is a process where we are trying to resolve problems between the complainant and the police force. If we went to an independent complaints adjudication, how do you make the police feel at ease? Are we not into a difficult situation here? Are we looking at it as a no-win situation in terms of one side or the other? I gathered that from your position.

Mr. Borovoy: No, I do not think it is a no-win situation at all. I would think that would be the significance of a rather fortunate experience our organization had when it made common cause with the police association a few years ago. What you had was a brief where you had the police association and our organization jointly calling for what we are suggesting here today and a number of protections for police officers when they are under investigation.

If a little more attention were paid to addressing some of the internal concerns of the police officers and this bill were developed into a broader package, as we suggested it should do, and addressed their problems as well, I suggest this is not a no-win situation at all. It is quite possible, even as you may

have disagreement about numbers of things--I do not think the object of these things could ever be in total agreement with everything--you might have a much less unhappy situation than you would have were Bill 68 to remain in this kind of form.

12:10 p.m.

Mr. Elston: We have had your association with the police association. What about your association with the police chiefs of Toronto, for instance?

Mr. Borovoy: I am still working on that.

Mr. Elston: There we have someone who is not going hand in hand with you in presentation, and in many respect they also are a portion of the police complaints procedure. How do we make them feel at ease with the fact that they might perceive an independent civilian investigative team undermining their particular function of keeping control of their--

Mr. Borovoy: One possible way is to beef up their powers at the end of the proceedings, rather than at the beginning of the proceedings. You might give the chief much more scope at the end of the line rather than at the beginning of the line.

Somewhat akin, if I could suggest this possible analogy to you, is what you sometimes might do with a royal commission. That is, a royal commission is called because the public perception will not trust the government to do an investigation of itself.

To respond further to the Solicitor General, even if he is no longer here, this does not mean that we necessarily assume bad faith from the government all the time, but it is that it is simply not enough to quell public anxiety to have people who have interests in the matter investigate themselves. So you have a royal commission do it. It conducts a full and fair hearing but the government ultimately can make the decision about what to do.

Conceivably, you might adopt that kind of model even with the police, that the chief may be given much more scope at the end of the line, but would have to do it under the impact of an independent investigation and review. So that you see, even if he is entitled ultimately to disagree with it, he has to deal with the pressures generated by that.

It is certainly not our suggestion or our aim to denude the police chief and police management of their functions. What we want to do is encumber those functions with the proper amount of independent involvement in the process.

Mr. Elston: What really, in fact, you would be wanting to do is to put the police complaints commissioner in the position of the police chief. The police chief now has total discretion in how he deals with the inquiry at this point. Is that not correct?

Mr. Borovoy: No, not necessarily. What you might do is start with the--there are several models, I am not necessarily wedded to any one. In fact, you could retain the present model,

but there are other ways of doing these things. You could have the PCC conduct the investigations through his investigators and then try to resolve the complaints, and if they cannot resolve them, perhaps have a public hearing. After the public hearing, you could give the matter over to the police chief to make a decision as to what to do in the light of all this evidence that has come to light. He may then make a decision as to what to do with it.

Mr. Elston: I understand there are several models, but really what I was getting at is this: as soon as you put the PCC into a position of ultimately having better discretion in face of the police chief, and in the face of management, you are actually leaving the police chief out in the cold.

Mr. Borovoy: No, that is my point with you. You are not, because what I am saying is the PCC may be able to investigate, conduct hearings, but the chief--you might turn around under another model and give the chief the power to decide what to do about it, as a result of whatever evidence has been gathered, whatever reports, whatever hearings have been conducted. You might turn around and give the chief the power to determine what to do about all this material. That is another possibility.

So the chief would effectively be the decision-maker, subject perhaps to a right of appeal as you may envision, but he would be the effective initiator and decision-maker after that. To go back to my earlier model of the royal commission, the royal commission has investigated, conducted hearings, generated all this evidence and material. The government then decides what decisions it will make. The government has not been deprived of its decision-making responsibility, but it is making those decisions under the impact of that process.

That is the difference and that is why I suggest to you that with this kind of an approach you would not necessarily at all be removing the effective decision-making power of the chief.

Mr. Elston: Okay, in terms of the decision-making process, as soon as the police chief has seen this independent investigation coming up or whatever, or the PCC wanting to do it, you suggested that he should look into the matter of whether there should be an inquiry should be removed from this particular bill. Do you not see that as--

Mr. Borovoy: I am sorry, what is it?

Mr. Elston: Section 14(3) which deals with the discretion allowed for the PCC getting in early. You said basically that the recourse to the courts should be removed in terms of the police chief who may ask for the decision of the PCC to be--

Mr. Borovoy: There was an alternative recommendation.

Mr. Elston: It came under your heading "double standards" and you were trying to balance out the double standards, I presume by your brief. One way that this would be balanced would be to remove the avenue to the courts, in other words, unfetter the discretion of the PCC, is what you were saying.

Mr. Borovoy: That, if you will recall, was limited to the very narrow situation of 14(3) where the PCC is given certain very narrow grounds on which he can conduct an investigation. You will recall that was an alternative recommendation. I do not want any of that. As far as I am concerned, the PCC should be doing all of the investigations, but even taking that model as an alternative, all I suggested is that there is really no point. Once you give the PCC such narrow grounds, if you make those narrow grounds in turn subject to the judicial review procedures, all the chief has to do is to apply to the court. Even if he turns out to be wrong, he has effectively frustrated the PCC investigation.

What I am suggesting to you is that if you are appointing the kind of PCC who seems to in fact enjoy so much confidence right now--although I know that ultimately one looks at structures and not at personalities--I am simply asking what would be lost by allowing the PCC to make the judgement. It is not an unfettered discretion, his judgement would be fettered by the terms of the bill, but you simply do not allow even that narrow judgement to be possibly fettered further by a judicial review application which would frustrate it even if the application turns out ultimately to vindicate the PCC of that matter because the whole thing would be forgotten by then. So all that you have to lose by trusting the PCC to interpret the statute, rather than make that particular thing subject to judicial review, why not do it that way, that is all.

Mr. Elston: Taking that into account, limited as it is, is your point that if you give the police chief ultimately more power, more authority at the end of the process, that he will feel comfortable with a possibly independent investigation up front. How does that work? I somehow perceive that the police chief may very well have the same problems in digesting an investigation by someone outside his force that we see the complainant having with an internal investigation. I am trying to figure out how we can provide this management, if you want to call it that.

Mr. Borovoy: I would not think so, because I am assuming that you are going to be appointing good investigators, that you are going to be appointing--and have appointed, in fact--and even if he does not stay on the job for whatever reason would replace him with competent people. Indeed, I would imagine there would be a certain amount of consultation with the chief as to who was being appointed. I would expect there to be a certain amount of consultation with a lot of parties, so that whoever is appointed would enjoy a certain amount of confidence on the part of the interested public; at least I would hope that would happen.

12:20 p.m.

Mr. Elston: That brings me to another point and that is again under double standards; you were suggesting that there is a possibility of or perception of unfairness in the composition of the board by the citizens because of its composition. How would you remedy that problem?

Mr. Borovoy: I might remedy that by simply eliminating that one provision. In other words, there is no reason why potentially implicated parties, any more than potentially aggrieved parties, should have a special right to nominate members of the independent board. I could simply eliminate that provision and it would be done.

Mr. Breithaupt: That is not unlike the labour relations situation where there is a management person and a labour person and, therefore, those votes are every bit as committed, one might say, as they are here. How else would you do it?

Mr. Borovoy: It is not unlike the labour relations situation except for one thing. There is nobody representing the other side on the police complaints board. I have no particular objection if someone could come up with a formula for determining how to identify which aggrieved interests to supply that missing link. I, for one, have no objection to that. All I am suggesting is, in the absence of that, don't give the implicated parties special rights that the aggrieved parties don't have; that's all.

Mr. Elston: Those are my comments.

Mr. Chairman: Fine, thank you, Mr. Elston. I believe Mr. Laughren was next, or was it Mr. Philip?

Mr. Philip: Perhaps I can simply say this, Mr. Chairman, and direct my questions to you rather than to Mr. Borovoy and his group. In the past, when we have had complicated bills like this, we have provided an opportunity not only for input from distinguished bodies, such as the Canadian Civil Liberties Association, at the beginning of the debate of the bill but also, during the clause-by-clause discussion, we have allowed certain bodies or any body to make short presentations requesting amendments in particular clauses.

It strikes me that this excellent presentation has made a number of interesting proposals, some of which would be taken care of by amendments to the certain clauses in this bill and others of which will be taken care of by consideration by the Solicitor General and by those who will be in charge of implementing the bill.

I am wondering if it is your intention, since there are a number of very specific matters in the recommendations, to invite Mr. Borovoy and give him or his representative an opportunity to make short presentations before any particular passage of any section of the bill, as has been the past procedure of this committee.

Mr. Chairman: Mr. Philip, as to recalling or re-inviting any person or inviting any new person, that would be up to the committee as a whole rather than the Chairman. If someone on the committee wishes they could put it in the form of a motion and have a vote; whether we have an actual vote or whether it is by consensus I leave entirely to the committee.

Mr. Philip: Maybe I can put a motion. I would move that during the clause-by-clause debate on this bill we allow short presentations--that is, of two or three minutes--by any member of the public who wishes to make a specific recommendation on a clause prior to the debate of that clause.

Mr. Breithaupt: I, as do many members of the committee, I am sure, have a variety of questions to ask on particular points. That will no doubt happen with each of these presentations. That is going to bog us down seriously as far as trying to stick to a timetable is concerned when many of these particular points will no doubt be discussed again during clause-by-clause discussion. If we are to complete our work within a certain time frame and hear the delegations, many of whom will have lengthy presentations to make, it may be better to know in advance that the various questions on a particular section or whatever can be dealt with thoroughly later on. Then we will be able to save our comments to general observations, much along the line that Mr. Philip suggested.

I would think the committee would benefit from using the system which has worked quite well in the past on occasion; particular groups more likely to be interested fully in the bill--and, of course, there is going to be a goodly number in this bill--would have the opportunity of making a brief comment at a section-by-section discussion, so that instead of paging through all the briefs and trying to find where section 6 was referred to and by whom, we would have the benefit of those persons being able to do it right then and there, with the clear understanding that a lengthy speech on a particular section at that point is something which the committee could not cope with. Brief comments might be possible and practical, and it might be a way of allowing us to stick to our schedule, which otherwise is going to be most difficult.

Mr. Andrewes: That would be at the Chairman's discretion.

Mr. Mitchell: I had a number of questions and comments I wished to raise with Mr. Borovoy, but we are in a time constraint.

Mr. Chairman: At this point we are dealing--

Mr. Mitchell: I want to deal with the issue Mr. Philip raised. Mr. Breithaupt has pointed out some of the problems we are facing.

If that motion is to be voted on, I think we should have the opportunity to give some consideration to the ramifications it would have on this committee and its deliberations. I do not disagree necessarily with them, but at the moment I have mixed emotions on whether I could say yes or no. If we have the opportunity to question people and have comment from them, what Mr. Philip is suggesting may not be necessary. It is really up to you, Mr. Chairman, to control our time in that fashion. I think that motion should be tabled for consideration later on.

Mr. Breithaupt: I have no objection to that approach. It will be tough on the Chairman, I would think.

Mr. Mitchell: The Chairman's job is never easy. Both you and Ed know that.

Mr. Philip: If the tabling motion carries, Mr. Chairman--and a motion to table is always in order and takes precedence over my motion--it will mean that some groups will not be able, even in a loose way, to plan their schedules knowing for sure that they will come back.

I suggest that what my motion does is meet Mr. Mitchell's concern that he wants some opportunity to ask questions, and it will improve the questioning, because the questioning will be dealing with specific clauses in the bill, clause which are of particular concern to this organization or some other organizations that are coming. I would hope that the motion to table will be defeated and that we can deal with my motion at the present time.

Mr. Chairman: Mr. Philip, your motion is enabling. Is that correct? There is no automatic return by witnesses. It is enabling at the pleasure of the committee.

Mr. Breithaupt: And, indeed, at the pleasure I would think at that time to ensure that the Chairman has clear control over the meeting and does not want to hear the brief read a second time, as it were.

Mr. Mitchell: I have no intention of trying to impede the very thing that Mr. Philip or Mr. Breithaupt is talking about, so I will withdraw, provided it is understood to be on the terms on which we are speaking.

12:30 p.m.

Mr. MacQuarrie: I would like to reintroduce a motion to table. Due advertisements have been made; interested parties have been invited to present written submissions as well as appear before the committee and amplify their submissions. In view of the numbers of individuals involved here, when we come to clause-by-clause debate--and I would assume, Mr. Chairman, that you would give everyone a right to be heard--we will be bogged down here for months and months to come. I certainly would move that the motion be tabled.

Mr. Chairman: It is after 12:30; may we carry on with that? Can Mr. Borovoy come back after lunch? Are you available or no?

Mr. Borovoy: What time is after lunch?

Mr. Chairman: Two o'clock.

Mr. Philip: Mr. Chairman--

Mr. Chairman: Do you wish to deal with that motion?

Mr. Philip: If my motion carries, it will not be necessary for Mr. Borovoy to come back at this point.

Mr. Chairman: Except there are three or four other people who have expressed the wish to question him.

Mr. Philip: But his proposals are very specific to certain sections of the bill. Those questions, including mine, can be answered in dealing with that clause-by-clause section later on in the deliberations. I am saying we should deal with the tabling motion--I hope it is defeated--and then deal with my motion. Then Mr. Borovoy will know that he does not have to come back at two o'clock, but rather that we would hope he would be able to come back in two weeks' time when we are dealing with clause by clause.

Mr. Williams: With respect, Mr. Philip is being presumptuous in assuming he knows what questions other members of the committee will want to ask. They may want to ask questions of a general nature that have nothing to do with specific sections of the bill.

Mr. Breithaupt: We have to try to accommodate both.

Mr. Williams: There are members of this committee who still want the opportunity to ask questions of Mr. Borovoy on his general presentation this morning. That is what is being asked for. There are three or four people who want to have that opportunity this afternoon. So we could put that motion over until we have had that opportunity this afternoon.

Mr. Chairman: First, the chair is going to rule, subject to the committee overruling him, that there is no such thing as tabling in the committee. I will rule that out of order. I think that is a continuation of a ruling made in the spring.

Second, unless there is some further discussion, we should carry on with Mr. Philip's motion and have the question put.

Mr. Mitchell: I would suggest the motion be held until after the lunch hour.

Mr. Philip: Why not take the vote now? What difference does it make? You are being silly.

Mr. Williams: Mr. Chairman, I think we should deal with it before the end of the day's session. If Mr. Philip wants to put his motion now, I--

Mr. Chairman: Mr. Borovoy's comments may--yes, please.

Mr. Borovoy: Would it help matters--let me put it this way, if the committee wants me, of course I will feel a great obligation to change other plans. But it would be a great help to me if we could go on a little longer now. I do not know if that meets your timetable, but it would be much easier for me if it were done that way.

Mr. Williams: I am afraid other members have commitments too, Mr. Chairman. A number of our members had to be at another meeting 10 minutes ago.

Mr. Chairman: Can we possibly have the clerk arrange another day for Mr. Borovoy to come back and the persons who wish to--

Mr. Mitchell: That would be acceptable.

Mr. Chairman: What are we doing with your motion, Mr. Philip?

Mr. Philip: I do not think it is fair to the Metropolitan Toronto Police Association to hold them up since they are prepared to come at two o'clock.

Mr. Chairman: Would you withdraw your motion and replace it with one to have the clerk contact Mr. Borovoy?

Mr. Philip: Yes. I do not mind doing that for now with the understanding that I will still pursue the matter of allowing each group before the clause-by-clause debate.

Mr. Chairman: Mr. Philip moves that the clerk contact Mr. Borovoy to have him return at a time convenient to him for the other people to question him.

Motion agreed to.

Mr. Chairman: Thank you, Mr. Borovoy. The clerk will be in touch with you. We are recessed until two o'clock.

The committee recessed at 12:34 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
TUESDAY, SEPTEMBER 22, 1981
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Philip, E. T. (Etobicoke NDP)
Piché, R. L. (Cochrane North PC)
Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:
Hilton, J. D., Deputy Minister
McMurtry, Hon. R. R., Solicitor General
Ritchie, J. M., Director, Office of Legal Services

Witnesses:

From the Metropolitan Toronto Police Association
Ingle, L., Labour Relations Counsel
Walter, P., President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, September 22, 1981

The committee resumed at 2:23 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Toronto Police Force.

Mr. Chairman: Gentlemen, I see that we have a quorum in place. The next witnesses are from the Metropolitan Toronto Police Association, Messrs. Walter and Ingle.

Mr. Breithaupt: While they are taking their place, during the last four months I have noticed a variety of articles and editorials dealing with this bill that have appeared in various newspapers across the province. What I would like to do is table with the clerk a set of these articles, at least the ones I have seen. They may be of interest to some other members who might wish a copy, but I do not think it is necessary that everyone might want to receive them as an exhibit or whatever. They may be of interest and, if they are, then members might want to have a set made for themselves.

Mr. Chairman: If the members wish to note, exhibit three in your manual is the Metropolitan Toronto Police Association brief.

Mr. Walter: First of all, on behalf of the association, I would like to thank the committee for giving us this opportunity to present our views and make representations in respect of the provisions encompassed in the proposed legislation.

Our association represents approximately 5,300 uniformed police officers. As well, there are approximately 1,200 civilian members of the force. In the overwhelming majority of cases the public complaints, which are the subject matter of the proposed legislation, will be complaints respecting the conduct of our members. Members of the committee will therefore appreciate our deep concern with the provisions of the legislation and the proposed procedures for handling citizen complaints.

We have always recognized the importance of providing an effective means by which a member of the public, who feels he has been wronged or maltreated by a police officer, may have a free and ready means by which he may register his complaint, have it thoroughly and impartially investigated and satisfactorily resolved expeditiously and fairly. In the main we think that the proposed legislation provides that means.

Members of the committee will also appreciate, however, that we are just as concerned with the protection of the rights of the police officers against whom complaints are made. I cannot over-emphasize that point. It should equally be the objective of the legislation to ensure that such police officers receive fair and equitable treatment and protection against malicious and frivolous complaints. Again I can say the legislation goes a long way towards meeting our concerns in this regard.

There are, however, one or two respects in which we respectfully submit the bill should be improved.

The initial concern is that of the informal resolution of complaints. I am sure the committee is aware of the magnitude of the resolution of informal complaints and the quantity of informal complaints that come before the Metropolitan Toronto Police Force to be resolved in one way or another.

Experience, both in Metropolitan Toronto and elsewhere, has shown that the overwhelming majority of these complaints against police officers are relatively minor in nature: charges of incivility, the use of abusive language, irregularities in procedure, et cetera. Many such complaints arise out of confrontations on the street, whether Highway Traffic Act allegations or in emergent or stressful encounters. Things may be said or done by the citizen or by the police officer which, on calmer reflection, they realize had been better not done or had been better left unsaid.

The police officer is, after all, only human and may sometimes act or react in a crisis situation in a manner which he later regrets. The complainant too, may wish he had acted or behaved differently. Who among us, after all, never makes a statement or never does or says something in anger or on the spur of the moment which we later regret?

It is possible to resolve most complaints of this type informally and to the satisfaction of all concerned. Mr. Arthur Maloney, QC, in his report of May 13, 1975, to the Metropolitan Board of Commissioners of Police said, at page 208 of his report:

"... by far the vast majority of confrontations arising out of the citizen-police relationship fall into a category that can be dealt with in this way." What he meant by that was informally. "To create a massive structure to be utilized for every complaint, no matter how trivial, would be to hinder rather than advance the cause of good police-citizen relationships, as well as to place an intolerable and unnecessary strain on the complaint machinery."

Provision for the informal resolution of complaints is made in section 8 of Bill 68. Given the fact, as Mr. Maloney stated, that the vast majority of complaints can be dealt with informally, this is a most important section of the bill. Section 8(4), as it is now drafted, provides that, "No reference shall be made in the personal record of a police officer to a complaint resolved under this section,"--and again that is the informal portion, and we have added emphasis--"except where misconduct has been admitted by the police officer."

What will be the practical effect of such a proviso? The police officer faces the complainant at an informal discussion before the person in charge of the public complaints investigation bureau. The complainant is alleging that the police officer cursed him. The officer may know that the charge is true and knows also that a frank admission, an apology and a handshake will resolve the complaint to everyone's satisfaction, but subsection 4 says that if he makes that admission, a report to that effect will reflect in his personal record.

Few officers, for the sake of the informal resolution of a citizen's complaint, are going to make an admission of wrongdoing which will then be entered on and remain in his personal file. Such an entry will almost certainly adversely affect his chances for promotion at some future date, and will undoubtedly be used against him to increase his punishment if he faces a disciplinary charge some time later in his career.

2:30 p.m.

With such considerations in mind, what is likely to be his attitude at the informal hearing of the citizen's complaint? Should he blurt out the admission that cannot but hurt his future career, or should he simply admit nothing and make the citizen try to prove his allegation in more formal proceedings? After all, it would be the citizen's word against his.

We respectfully submit that in the interest of making the informal complaint procedure effective--and we can't stress this point too much--the final clause of section 8(4) of the bill should be deleted. There will be far fewer complaints resolved under this section if it is not removed. In essence, that is the practicality of the situation as it applies to police officers against whom complaints have been made.

We are in wholehearted agreement with the recommendation which Mr. Maloney made in his report in this regard. He suggested that no notation shall be made on an officer's personnel file regarding a complaint unless that complaint is established by due process. That is found in recommendation 51(j) on page 254 of his report of May 13, 1975. However, that is not to say there should be no record at all of such complaints. Again to quote from Mr. Maloney's report found on page 209:

"While it is true that this report recommends that a notation of his conduct should not be entered"--and I stress should not be entered--"on an officer's personnel file unless a complaint has been established after a hearing, none the less if the records of the complaint department indicate a chronic pattern of behaviour of an officer which is unacceptable, the judicial branch of the complaint department may direct the appropriate divisional commander that no future complaints against such officer may be informally resolved and instead must be referred to the complaint department."

The procedures recommended by Mr. Maloney in such cases can be readily adapted to the complaint framework contemplated in the present bill. Maybe I will answer some questions further on that

particular point, or do you want me to complete the submission?

Mr. Williams: What is your definition of chronic pattern of behaviour? Would it be on more than one occasion that the complaint would have been proven against an officer, or three occasions, or 10 occasions? What is "chronic" in your definition?

Mr. Walter: In my view that should be determined by the complaints commissioner. Every situation, where there is an informal resolution is recorded and that record is forwarded to the complaints commissioner but not to the personal file of the individual officer. When the complaints commissioner or support people see that a pattern is developing, then the onus is on them at that time to take further steps, such as notifying the unit commander and resolving these concerns which are obviously underlined.

I am thinking of areas where a police officer may have a tendency to use offensive language--and it does insult people--where there is a repeat of these complaints at his station and they are resolved informally and the officer offers his apologies, there is a handshake and that resolves the problem. But obviously, if it happens three or four times, then there is a problem there which should be explored further in my view.

Mr. Williams: I guess the primary criteria would be quantitative rather than the variety and nature of--

Mr. Walter: As well, if there was a variety of misconduct, whether it be on a particular pattern or whether it encompasses a great many different allegations of police misconduct, I think at that point the commissioner obviously has to step in and prevent any more informal resolutions.

Mr. Wrye: In your view that power should rest with the commissioner rather than the inspector or anybody else running the bureau?

Mr. Walter: Yes.

Mr. Breithaupt: This could be within a division as well as by an individual basis?

Mr. Walter: I don't quite follow you, sir.

Mr. Breithaupt: It could appear perhaps in one division or in one precinct, however the force might be divided, that these complaints may seem to be coming all from one corner of the town, as well as including some individuals more often than others, so there are a variety of things that can be looked at as far as management is concerned too?

Mr. Walter: Yes, it could be singularly as far as an individual officer is concerned, or an attitude as far as the entire division or unit may be concerned. Yes, I think that is a very valid point.

Mr. Elston: Would this then require in every case of

informal resolution of complaint a written report be forwarded to the commissioner so that he can follow through and on to any investigation that was done as well (inaudible)?

Mr. Walter: Yes.

The next issue is protection against double jeopardy and it is generally accepted in our society that no one should be punished twice for the same offence. If he is tried for a wrongful act and either acquitted or convicted, he should not later be brought to trial again for the same wrongful act. This principle is recognized in our criminal law in the pleas of autrefois acquit and autrefois convict--literally, formerly acquitted and formerly convicted.

In Mr. Maloney, in his 1975 report, recommended specifically that, "No officer shall be permitted to suffer double jeopardy." It is not at all clear in our opinion that there is any protection in Bill 68 against an officer suffering double jeopardy.

Section 9 of the draft legislation provides that, where a complaint is not resolved informally, an investigation is to be made and a report forwarded to the chief of police among others. Under section 10, the chief of police, on receiving the report, may have the officer prosecuted, refer the matter to the public complaints board for a hearing, take disciplinary proceedings against the officer under the Police Act and counsel or caution the officer. All four courses of action are open to him.

If he, in addition to any other action, refers the matter to the board, a hearing de novo is held pursuant to section 19. If a member of the board sitting alone finds the officer guilty of misconduct he may reprimand the officer, order the forfeiture of up to three days' pay or suspend the officer for up to five days. In more serious cases the board itself may award any one of a number of penalties from a reprimand to dismissal from the force.

These punishments set out in sections 19(13) and 19(14) of Bill 68 are virtually identical with those contained in sections 16(4) and 20(2) respectively of regulation 680 under the Police Act, yet nowhere is it made clear in the draft legislation that the one set of discipline procedures is the alternative to the other. This matter should be clarified and the bill should be amended to provide specifically that no officer shall suffer double jeopardy.

Admissibility of evidence: As has been previously noted, the legislation provides in section 8 that where possible complaints should be resolved informally. If these are handled correctly and if the amendment we have suggested above is made, then we feel that a large proportion of complaints under the act can be resolved in this manner. Obviously the process contemplates, as it should, frank, open discussion, a minimum of formality, flexibility in procedure and no requirement for sworn evidence.

However, if the complaint is not resolved informally or if other proceedings, including disciplinary hearings are subsequently taken, then there must be adequate protection against

the misuse of statements, admissions, et cetera, in such further or other proceedings.

The laws of evidence have been slowly and carefully developed over the years to protect the rights of parties and witnesses against gossip, hearsay, unsworn statements and the like. Evidence in criminal proceedings and in civil litigation must be given under oath and witnesses must be subject to test through the fire of cross-examination.

Unsworn statements or admissions which may be used in an attempt to resolve a complaint informally should find no place in other more formal proceedings or disciplinary hearings from which more serious consequences might flow. We respectfully submit that recommendation number 51(d) made by Mr. Arthur Maloney at page 254 of his report should be incorporated in the bill.

Mr. Breithaupt: Where would you put it?

Mr. Walter: I think we could follow that as an extension of section 22(3).

Mr. Maloney said, "Statements obtained in the course of the investigation into a citizen complaint shall only be admissible on a hearing conducted in accordance with these recommendations and not otherwise."

While there is some protection in sections 19(10) and (11) of Bill 68 in respect of the use of statements, answers or admissions made by an officer in proceedings under the complaints legislation, such protection does not extend to their use in disciplinary hearings under the Police Act or to civil litigation or criminal prosecution.

I mentioned civil litigation there. Section 22(3) does provide some protection as far as civil litigation is concerned, but not dealing particularly or specifically with admissions. We think it should and that Bill 68 should be amended accordingly.

2:40 p.m.

If you would like me to summarize: We respectfully submit that the following changes should be made in Bill 68.

Subsection 4 of section 8 should be amended by deleting the clause "except where misconduct has been admitted by the police officer."

Section 19 should be amended by adding a new subsection to provide that no police officer who has been found either guilty or not guilty of misconduct at a hearing under this section shall be subject to disciplinary proceedings under the Police Act and the regulations thereunder.

A new section should be added or extended on section 22(3) to provide that a statement or admission obtained in the course of an investigation into a citizen complaint shall only be admissible on a hearing conducted pursuant to this act and not otherwise.

There is one other area of concern that has not been noted here and maybe I was somewhat remiss in that area. There had been some discussions with representatives of the Metropolitan Toronto Board of Commissioners of Police. That deals with the indemnification of legal fees for police officers who find themselves the subject matter of this new legislation.

Certainly, there are going to be proceedings that we have not been exposed to in the past. They will want the protection which is afforded any citizen in Canada and that is the protection of counsel to advise them. Counsel, as we have noted, does not come cheaply and there are going to be some heavy costs incurred, and I can foresee that.

I would suggest that, while it is in an experimentation period, as well we could evaluate over a period of three years what the cost for legal indemnification for police officers would come to but, in the interim, that their legal fees could, after they have been taxed, be paid accordingly.

Mr. Chairman: Thank you, Mr. Walter. Mr. Minister, would you like to respond?

Hon. Mr. McMurtry: No, I should just simply like to thank the president of the association and its counsel for their presentation. Certainly, we are reviewing some of his very useful and important suggestions, but I do not have any further comment at this time.

Mr. Breithaupt: I just have one point. It would appear we are going to be dealing with a great variety of suggested amendments through each of these presentations. Might I suggest that our clerk attempt, by keeping a summary of the sections referred to, be able then to prepare for us, by the time we have heard all of the submissions, several sheets which will have the section and then the comments made, such as "police association says amend," or, "group X or Y says delete or should do something else," and then the reference, "exhibit four, page seven," something like that.

If we are able to do that, we shall then have the opportunity of getting all this material thoroughly in one place. For that purpose I would suggest that the third recommendation referred to by the police association be considered a suggestion for section 23(4) and, if we could refer to it in that light, then it will be before us when the time comes to consider it.

If the clerk could do something like that, I think it would be very useful as we receive more and more information.

Mr. Chairman: Fine. Thank you, Mr. Breithaupt. Mr. Williams?

Mr. Williams: I just want to come back to that supplementary remark you made pertaining to costs in court proceedings and the fact that, undoubtedly in many instances, there will be very substantial costs incurred.

I am not clear as to your concern in the matter given that, under section 19, provision can be made on a discretionary basis, for the police commission to pay--

Mr. Walter: Section 19(17) provides that the police commission may--

Mr. Williams: That is right.

Mr. Walter: But it has been our experience--I believe that same language is incorporated within the Police Act of Ontario where there is recommendation made to counsel. Unfortunately, there have been a great many of our officers who have experienced difficulty as far as legal indemnification is concerned.

They have been acquitted of charges but because of the background of those charges--and we do not support the view--but the recommendation for indemnification has not been made. What we would like to see is that it be obligatory in this particular complaint procedure.

Mr. Breithaupt: That it will be "shall" in every case?

Mr. Walter: Yes, as it is a new procedure that at least that protection and the indemnification be there for a police officer so that he knows he does not have to spend thousands and thousands of dollars defending himself against a particular action.

As you know, we have one before Metro council unfortunately with two police officers who were found guilty on a technicality in a murder investigation. Those legal fees were close to \$18,000, and if it was not for the benevolence of counsel--and this is another area where counsel was very benevolent.

But counsel will not continue to be benevolent if they feel they have a matter where they are going to defend a police officer and if they are not going to be indemnified for their cost, then I would suggest that most counsels would be rather reluctant to take that type of case on behalf of a police officer.

Mr. Williams: Are you saying that the experience to date has been that for the board of commissioners of police to pay those costs has been the exception rather than the rule?

Mr. Walter: No. I would be reluctant to give you a percentage.

Mr. Williams: I was just coming to that, whether you could give us a ball-park figure as to how frequently or infrequently they come to the support of the police officer by paying the costs.

Mr. Walter: Within the last two years it has become very frequent as opposed to years prior to that where it was almost--

Interjection.

Mr. Walter: Yes, it is a better word than rubber stamp.

Mr. Wrye: There are a couple of things I would like to discuss with you, Mr. Walter. There are two broad areas, I suppose, I would like to get your thoughts on. The first is the idea that the association and the police commission will jointly appoint, as I understand it, five members of the bureau.

I think you are aware there are some concerns in the community that it is, in a sense, stacking the deck, especially where we would get to a board of inquiry, that your appointments might well be people who would be always and automatically sympathetic with the police view.

Can you share with us your own views as to the kind of people you are going to be looking for? I do not know whether you have begun the process of looking for them, but the kinds of people you think should be your representatives?

Mr. Walter: There has only been one individual who has made an overture. I will not name him, but he is a retired reporter and from what I understand of his background--although I have never met the individual--he certainly, in my view, has the necessary background and qualifications to be one of our representatives.

I find no difficulty with that and I certainly find no difficulty with members of the business community. I would prefer not to have had any prior or previous contact with individuals who do make application but their background in the community for the service and the work that they do I think will be a prerequisite as far as determinations made by the police association.

Mr. Wrye: Just as a point of interest, do you perceive that there will be any difficulties in the association and the police commission getting together and agreeing on these points? You do not always agree on everything.

Mr. Walter: Certainly not on salary packages. I do not anticipate any difficulty. The rapport between the governing authorities, the police commission, the police association and senior officers the last year or so has been quite good. There are no obstacles. We have found that rather than confrontation, and I think on both sides, that co-operation is the key and the answer to resolving our difficulties.

Mr. Breithaupt: Do you see then that it is in the self-interest of the police side of this situation to have some independence of view from the representatives to make the system work?

Mr. Walter: Certainly.

Mr. Breithaupt: That is very good to hear.

2:50 p.m.

Mr. Wrye: If I can just pursue that, one of the matters

that came up in our hearings this morning, in discussion between Mr. Borovoy and the Solicitor General, was the matter of the perception of the public as to the way this whole procedure will work. The concerns that Mr. Borovoy expressed are concerns which will come as no surprise to you, and that is the faith the public will have in the police investigating themselves.

I did not get a chance to ask him this and I would just like to ask you, do you have any concerns that in the case of a serious allegation which is investigated by the police and proved to be unfounded, the police officer involved will continue to, in effect, suffer from the allegation simply because a lot of people in the community continue to think it was fixed, that those who did the investigating did, in effect, a trumped up job? Do you see the concern I am getting at?

Mr. Walter: I can see the point you are directing your thoughts to. Quite candidly, if there was an alternative system that was in effect in North America, or in the free world for that matter, that was working effectively as far as other forms of investigation are concerned, I would not be opposed to it. But we have looked, and I have had tremendous dialogue with my brothers from south of the border and other parts of Canada as well as from England, and to my knowledge there is no system as is described by Mr. Borovoy that works.

Mr. Wrye: Why is that, in your opinion?

Mr. Walter: I think any system, and it seems to have been forgotten somewhat here, but any system to work effectively as far as complaints into the conduct of police officers--and you have talked about being perceived by the public, and I agree with you that it has to be perceived by the public to be fair, but it also has to be perceived by the police officers themselves to be fair. If you do not have a system that is fair both to the public and to the police, then it is not going to work.

That is why I think with the legislation we have, subject to a couple of amendments, one in particular dealing with the informal resolution, we are going to have a system that works. It is going to have to be fine tuned and no one thinks that we have the finished product here, but after that fine tuning I think we will probably have a complaint procedure that is second to none.

Mr. Breithaupt: You are aware of Mr. Borovoy's comments that he feels the attitude of policemen and women in United States communities strongly influenced the failure of civilian review procedures. It was his view this morning that our Canadian forces do not have this same attitude and I think he welcomed, as we all would do, the opportunity of making this system work.

But it was his view that the examples there, south of the border, had sort of the cards stacked against them by the attitude of the cop on the beat and his representatives. Do you think that that is a fair observation, that at least there is that difference in attitude to some extent? It seems a bit reasonable to me looking into the Philadelphia situation where, as I recall, the chief became the mayor.

Mr. Philip: And subsequently became something else.

Mr. Walter: One of the areas that concerns me along those lines--and I think it is evidenced here with an announcement just several days ago of a group called CIRPA--what concerns me about an independent investigation is, is it truly impartial and independent, or are we going to have a group of individuals who obviously have had or still do have an axe to grind with members of the police force?

I think that is exemplified totally in this new group, the self-proclaimed Citizens' Independent Review of Police Activities, who are, in effect, going to bird-dog the decisions of the courts--which in my view just undermines the whole judicial process--and at the same time take complaints from citizens as though they were the gospel truth and almost make it a situation where an individual police officer is going to have to prove himself innocent as opposed to the present form of judicial system.

Mr. Wrye: If I can just return to this just for a second, the point that Mr. Borovoy was making this morning is certainly not to suggest the kind of investigation this group proposes to conduct perhaps, but to have an independent investigation that is set up under the PCC, that he control the investigation as well. As you know, and the Solicitor General suggested this morning, he can in exceptional circumstances do so now. He will have some of his own investigators perhaps. If he can do it once in a while in exceptional circumstances, why wouldn't he be able to do it all the time?

Mr. Walter: As far as an independent investigation, a good police investigator develops certain traits, as I am sure you do in your profession. One of those is almost like a sixth sense,

Mr. Breithaupt: Seventh, eighth, ninth.

Mr. Walter: Tremendous hindsight as well.

Mr. Mitchell: Keep counting.

Mr. Breithaupt: How many elections was it, 11?

Mr. Philip: Supplementary: Would you not agree that the impartiality comes from the training of the person who is doing the investigation? If so, if the investigator is properly trained in police investigation techniques, what difference would it matter to whom he reports?

Mr. Walter: As I said, it's sixth sense. There seems to be something other than just adequate police training as far as investigation procedures are concerned, and certainly not every police officer is gifted with this sixth sense, but there are certain officers who are and make tremendous investigators because they are able to ferret out the truth and separate the wheat from the chaff. We have those investigators now. Again, quite candidly from the view of our own police officers, they would certainly prefer someone not as astute carrying on the investigations into citizen complaints.

Mr. Philip: But you have just accepted that the investigator, perhaps now working in the manner in which this bill would have him work, could be either competent or incompetent, so I fail to see what your distinction is, provided the investigator is properly trained, be it through adequate police college training or through experience in the police force, another police force or another policy agency.

I fail to see the distinction, provided that person is trained and shows a competence in investigative work. Obviously whatever system you set up, you are going to try to hire the best investigators possible and set certain standards for their training to become that kind of investigator. Therefore, I am left again with the question of what difference does it make to whom they report as long as they have that kind of training, so that they won't accept hearsay evidence and not allow their personal philosophical or other biases interfere with the investigation.

Mr. Walter: Again I may be somewhat repetitive in that area as far as independent investigators are concerned. In the makeup of the force, what you would call the pecking order of the force, the respect one has for the other as far as investigations, the actual investigation itself into a citizen complaint and how the officer himself responds to it when he is being investigated, I would think there would be dozens of inherent problems arise by having someone who is not a member of the force conduct those investigations.

It doesn't necessarily need to be a member of the Metropolitan Toronto police force. I can see the way this legislation is being put forward, subject to amendment or fine tuning down the line, having the Ontario Provincial Police or even federally the Royal Canadian Mounted Police. It's almost an unknown quantity as far as the investigative talents of police officers who are investigating police officers. To be able to completely define it is most difficult, but maybe over a period of time and discussion you could get the feeling of what exactly exists there and the feeling of a police officer being investigated by another police officer as opposed to someone from some other authority.

3 p.m.

Mr. Philip: I don't want to prolong it, because I have other questions on the list, but if you call an investigator a police officer or if you call him an investigator, whatever his background is, as long as it is adequate according to the criteria that makes for a good investigator and as long as his training is adequate to make an adequate investigator, what difference does it make whether he is--you seem to be hung up on "police officer"? Many of the investigators whom Mr. Borovoy would perhaps be recommending would be ex-police officers, ex-RCMP officers or have served on different forces.

However they obtain that expertise, I fail to see the distinction as to whether or not he happens to be called a police officer at this point in time or whether he happens to be given the label investigator or what have you, and I still fail to see

the importance of who he reports to. Maybe I will leave it at that. I don't want you to give me the same answer over again, but if you have any insight into that I would appreciate it.

Mr. Walter: I don't know how to put it very simply with regard to those types of investigations and I don't know who Mr. Borovoy suggested as far as investigators are concerned. As far as other police officers from outside of the force investigating complaints within the force, my mind reflected to the Albert Johnson situation where the OPP carried on an investigation, but of course that was a situation of great magnitude. What we are talking about here are complaints which certainly are not of that magnitude.

When an investigator is investigating a police officer and both are from Metropolitan Toronto, an investigator may call a staff sergeant or an inspector of the officer who is being investigated and he can talk on a first-name basis: "Give me the lowdown. What type of character is this police officer? Is he diligent? Does he do a good job or does he have a tendency to malingering? What's his background?"

I think there will be a free flow of information along these lines which you really won't find documented anywhere where an independent investigator is going to come up with this information. I know it may sound irrelevant but it's all part of the entire building of the investigation. I think it's an integral part of the building of that investigation.

That is only one small example. Given the time I could probably think of dozens of them where this would be possible.

Mr. Philip: We would hope that relationship would not be built on personal relationships, but rather on the competence of the investigator.

Mr. Walter: Yes.

Mr. Philip: If, in fact, it's based on the competence of the investigator, what difference would it make whether we go one route or the other in terms of him getting that information?

Mr. Walter: Again it's the expertise, the tactics the investigator has developed, and each one is unique. They are not stereotyped as far as investigations are concerned. Each team or individual investigator certainly do not all operate on the same format.

Mr. Philip: But Borovoy never suggested that he wanted incompetent investigators. That is kind of a red herring.

Hon. Mr. McMurtry: Red herring? Excuse me, with all due respect--and Mr. Walter doesn't need any assistance from me--it happens to be the position that the Morand commission, Maloney commission, Morin commission, the McDonald commission, Cardinal Carter in his report and the United Kingdom Parliament have all come to the same conclusion independently of one another. With all due respect to the witness, I don't think it's fair to talk about

it as a red herring, because all of these bodies examined that very issue exhaustively and came to that conclusion.

Mr. Philip: With respect to the witness, we will be going through those studies, no doubt, and I think perhaps my interpretation of some parts of those studies may be a little different than what the minister gave in his opening statements this morning.

I have one more question, but it is not a supplementary, so you can put me on the list or I can ask it now.

Mr. Chairman: Mr. Philip, you are the remaining speaker, so would you please carry on with the new question.

Mr. Philip: One question then. I wonder if you would be kind enough to look at 22(3). Can you tell the committee if you do not feel that your summary recommendation number three on page six is covered by that subsection and, if not, would you mind elaborating?

I gather you said you would add a new section, and I am wondering, is 22(3) not adequate? If not, would you be open to changing 22(3) and in which way?

Mr. Walter: Section 22(3) does not provide for an informal admission. It says, "No record, report, writing or document arising out of a complaint is admissible or may be used in evidence in any civil suit or proceeding, except under this act or in a disciplinary proceeding under the Police Act and the regulations thereunder."

Mr. Philip: So you would be open then to an amendment to 22(3) that would acquire what you have asked for in the new section?

Mr. Walter: Yes.

Mr. Philip: That would be an easier way of doing it.

Mr. Walter: Yes.

Mr. Philip: Thank you.

Mr. Hilton: It was our thought that 22(3) covered the circumstance outlined by Mr. Walters. It may well be that it does not. We will take that under consideration.

Mr. Williams: That was the point raised this morning by Mr. Borovoy about oral evidence as contrasted to written documentation.

Mr. Hilton: Yes, "No record, report, writing or document." There is an implication there, I must say, in the words that they are written.

Mr. Walter: As well, with the Criminal Code, if there was an investigation which went from a citizen complaint and moved

from that arena to that of the courts, certain evidence may be obtained. I would think the officer should have that protection and at least be made aware at that time that anything he says or writes may be used in a court of law. I think that protection has to be there, as well.

Mr. Hilton: The remark made this morning, in that the Canada Evidence Act and the Ontario Evidence Act might have bearing on that, the whole matter will be reconsidered. It may not be changed, but it will be reconsidered in the light of your submissions, our understanding of the submissions and our thought as to what it did cover in the Canada Evidence Act and the Ontario Evidence Act.

Mr. Walter: We are looking for a system of citizen complaint procedure which will be perceived by both the public and the police as being a legitimate system of citizen complaint procedure.

Without placating those from the ministry who put this bill together, although it is not as encompassing as what Arthur Maloney had recommended back in May 1975, it certainly does provide the same theme for the resolving of citizen complaints and takes into consideration the citizen as well as the police officer as far as fairness and impartiality is concerned. That is what our bottom line is.

Mr. Chairman: Thank you, Mr. Walter.

Mr. Ingle, did you wish to make any statement?

Mr. Ingle: I have nothing to add.

Mr. Chairman: Mr. Laughren.

Mr. Laughren: I can't find it in Mr. Borovoy's brief, but it just occurred to me--whether he just said it as an aside or whether it is in this brief--that at one time, several years ago, the police association was in support of the kind of complaints review that he is talking about and that now the association has changed its views.

I wonder whether you could enlighten us on that.

Mr. Breithaupt: The bottom of page three.

Mr. Walter: Yes. I believe that was--it certainly was prior to Arthur Maloney's recommendations in May 1975, and it has been described in the past by one of my predecessors, Syd Brown, as "an unholy alliance." I do not know if I would--

3:10 p.m.

Mr. Breithaupt: Syd who?

Mr. Laughren: Those alliances are not new to us in the Legislature.

Mr. Walter: I am sure.

Mr. Laughren: We have had minority government here.

Mr. Walter: It was new to me at the time.

Part of our concerns at that time was for the rights of police officers, and what we were looking for was an opportunity to have our thoughts put forward. It seemed to be that seven or eight years ago police officers were considered not only as public servants but at the whim and the direction of whoever, whenever, and did not recognize the rights of police officers.

We have been expounding on that for a great period of time, and I think this bill provides some of those protections we think should be there, which are afforded any citizen in society today.

At the same time--and the minister's name escapes me--the Solicitor General from Burlington?

Mr. Hilton: Mr. Kerr.

Mr. Walter: Yes, Kerr. What is his first name?

Mr. Hilton: George.

Mr. Walter: He was here for such a short period of time. We just had our submissions and then he was removed.

Interjection: He is standing at the door right now.

Mr. Walter: I hope he doesn't have a loaded gun.

We always found him fair, if not always understanding. I don't know if that was tactful or not.

What we attempted to do, again quite candidly, is to put some profile, put some light, acquire some press, for the rights of police officers in that particular instance. We thought probably the only way that we would have any credence at all with government or others would be to do something which was somewhat dramatic, which we did do, and we aligned with Mr. Borovoy.

It was not just an afternoon discussion where a draft was presented; there were proposals and counterproposals. We started off with just a magnitude of requests from both sides, and I believe we narrowed it down to about three or four that we could agree in principle on. Certainly the independent investigation was agreed upon with tongue in cheek, mainly to acquire what we were looking for on the other side as far as rights for police officers were concerned.

Mr. Laughren: It was more of a tradeoff, you are saying?

Mr. Walter: Yes.

Mr. Laughren: But you could have lived with it, obviously.

Mr. Walter: I think we evaluated the government at that time and realistically we were not the least bit optimistic that those proposals would be agreed upon. I know further down the road we could have amended our position somewhat.

Mr. Laughren: But you would assure us this afternoon that the bulge in your cheek is not your tongue?

Mr. Walter: No, that is probably from the rubber chicken circuit.

Mr. Laughren: I see.

Mr. Walter: No, of course not. I have more or less lived with this procedure since 1974 and have taken certain trips and had people to Ontario who have had different complaint procedures, such as Chicago and what was proclaimed last November as being the greatest system since sliced bread. It lasted just a very few short weeks and was proved to be unworkable and not effective.

They certainly have a problem as far as investigating complaints there, and the amount of complaints they do have and the amount of times police officers even discharge their firearms would scare the hell out of all of us, I am sure, if we lived in a situation in a city like that.

I would like to see the legislation put into effect. I am optimistic that it will work and that it will work effectively. If it doesn't, I will be the first one to admit that it doesn't and o look for an alternative system.

Mr. Laughren: Can we come back to your differences, though?

Your main concern is not with the bureaucracy, I would guess. It is surely with the principle involved of an independent investigation--is that correct--rather than whether or not there would be too many complaints or evidence would be collected in one way or another? Is that safe to say?

Mr. Walter: I would think that an independent review and that the tribunal be independent. That is what is of great concern to us, as well.

There is an investigation which is in-house, but that information is then relayed to the complaints commissioner or possibly to a tribunal of independent and impartial individuals.

I am satisfied from that end of it, as far as the hearing aspect of it is concerned, that it will be fair and that it will be independent and it will be impartial.

Mr. Laughren: And is it the in-house investigation that you would least like to give up?

Mr. Walter: It is not a matter of giving up. I think its effectiveness--as far as an effective investigation is concerned and an area that isn't going to create more friction and more

animosity and one that there isn't going to be co-operation.

Mr. Laughren: Well, for whatever reason--

Mr. Walter: The system now, as far as investigations are concerned, in my view is done thoroughly, probably as thoroughly as it possibly could be. Although the minister is gone the reports that he alluded to all indicate that there should be in-house investigation.

Our members would feel more confident, if the investigation was done in-house, that it would be done fairly and thoroughly and not with anyone who might have an axe to grind.

Mr. Laughren: I won't comment on axes at this point, but it is a fact that for an in-house one it could also of course be said about that.

But when you make your recommendations, as you have done in your brief, presumably it was with consultation with your membership and so forth--your executive and however your organization works--but was there a lot of consideration given to the changing socio-economic mix of Metropolitan Toronto and what is happening out there in terms of the numbers of visible minorities who perceive--at least perceive, if not in reality--they have problems?

I am thinking of the comments made by Mr. Pitman earlier today, I don't know whether you were here or not.

Mr. Walter: No, I wasn't.

Mr. Laughren: Because he had done his report on that whole problem. Whether or not the association really looked at that aspect of an independent complaints process, investigation, as well.

Mr. Walter: The areas that you are touching on, the mosaic of Metropolitan Toronto, I think, are properly handled and are being expanded upon obviously, because there is a need there as far as communication with both the visible and the nonvisible minorities. But that is another area of policing; that is community services. That is with the crime prevention.

Mr. Laughren: But is it, though? That is what is bothering me about this whole process. I didn't come on to the committee with cast in stone views about this procedure. I really didn't. Personally I didn't; my party is on record but I was somewhat ambivalent about the whole thing.

I wonder if you can make that distinction that you have just made between police work and communications and so forth. How do you make that separation?

Mr. Walter: I am just trying to read into what you are saying--

Mr. Laughren: No, I am not trying to be devious.

Mr. Walter: Are you saying that investigators, on a quota system, that we should have--

Mr. Laughren: No, no. Not at all.

Mr. Walter: --X number of blacks and X number of Asians, that sort of--

Mr. Laughren: No, no, no, I'm sorry. Not even remotely am I thinking of that. That hadn't even entered my mind at this point.

It was rather that you made the statement that the mosaic, as you put it, of Toronto, is not a policing problem, you are saying. You are saying that is some other kind of problem. I don't want to put words in your mouth; that is what you just said. What I am saying is--I don't know in my mind how you make a separation between--

Mr. Walter: You said a problem. I don't see it as a problem, I see it as an understanding between the services provided by the police and the community, as well as members of the community who make up that mosaic. I really don't see it as a problem in that regard.

It is one where obviously the lines of communication have to be opened further to really get into the communities, so that we both have a better appreciation of each other's positions. But--

3:20 p.m.

Mr. Laughren: No quarrel with you there, but what about the role of this complaints system? Do you not see that independence as being part of that process both in terms of the bureau and the investigation that occurs?

Mr. Walter: What I hear you saying is, "Can we placate certain groups of people in this process?" I would say no to placating any group of individual representations or whoever they may be. Again, we have to look at the overall good of not only the citizens of Metropolitan Toronto but the police force itself and to make sure that we maintain the high level of policing service that we have in Metropolitan Toronto.

A great many of our members are saying to me, "Hell, I get paid the same regardless of happens, whether I do an effective job out there on the street or whether I just put in my time and answer the radio calls, and let it go at that." I would be sickened if policing in Metropolitan Toronto ever sunk to those depths.

Individuals can only take so much criticism, and can only be under the gun to the point when they say, "Who cares?" It is not close to that point but I see it possibly moving in that direction. I do not want to see that happen in Toronto where we do have pride in our jobs and we do have respect for ourselves and each other and the type of policing that is performed in the community. I do not want to see that washed away as a result of

coming up with the pie-in-the-sky type of citizen complaint procedure. What we have here is basically sound, subject to revision. I think we should give it an honest effort and an honest shot.

Mr. Philip: Some of the police officers I have spoken to seem to feel they were under the gun much more by an in-house investigator than by a properly qualified, well-trained, out-of-house investigator.

You mention you are speaking on behalf of 5,300 uniformed members and 1,200 civilian members of the force. Can you tell us what process you used when consulting this membership? Are the views you are expressing really the views of the majority of those members?

The small poll I have taken--admittedly of only five or six friends who happen to be on the police force--does not seem to concur with the position you are taking. I may have a select group of friends with select opinions, I don't know about that, but what--

Mr. Piché: What are their names? I want you to name them.

Mr. Philip: I think the very fact that I do not name them may be what they are worried about in an in-house investigation. The position they take is--

Mr. Piché: The Police Act says that they cannot talk to you anyway.

Mr. Philip: Would you like to comment on that?

Mr. Walter: Yes, I do not share your views. We have had numerous general meetings of the membership with regard to citizen complaint procedure, the different bills that were proposed in the past. There was Bill 112, I believe, Bill 114, Bill 47. There were certain provisions in those bills that gave us concern.

The individuals you were talking to--I do not know how long the conversations were, but they were probably more concerned not that the actual investigation were being done with a certain viciousness by our in-house investigators; but they were more concerned with the handling or the disposition of the complaints through the Police Act trial system. Of course, we have an individual who is generally a superintendent who is designated by the chief of police to conduct the different hearings into police conduct.

That is where our membership perceives there are certain tactics taken which are not in keeping with the rules of evidence. In layman's terms, they feel that is a kangaroo court. I have not talked to anyone who is really concerned about anything other than the efficiency of the investigation. They have said, "Jesus, I wish they would let up." They have not let up because the in-house investigators have really pursued their mandate with vigour. It is more from the aspect of the adjudication. Here we have a system of either a tribunal or a single person appointed by the commissioner

who will hear these complaints. I think that will be extremely fair and impartial. I will be looking at some of the results of this adjudication, particularly at penalty. I do not think the penalties will be nearly as severe as the penalties which are meted out now by the present system of justice we have as far as the Police Act is concerned.

Mr. Philip: So if I hear you correctly, the anxieties are not about the investigation stage.

Mr. Walter: That is correct.

Mr. Philip: Therefore, whoever the investigator is, provided he is qualified or whoever he reports to, would not be a major concern to your members. The concerns would be what happens to that report after that investigation takes place.

Mr. Walter: Not with the report per se. The report would go to the complaints commissioner, and from there there would be a tribunal struck or an independent person adjudicating. They would not see the content of the report, obviously; they would just be there in that capacity, to adjudicate.

Our members are a little concerned with the tenaciousness of some of the investigators because they do a very thorough job. That is what we are all after; that is what we are looking for. We are not looking for any form of what has been described previously as a cover-up. As long as the investigation is honest. I have heard of only one allegation of prefabricated evidence. I was suspicious in that situation.

Mr. Philip: Some of the complaints we will get from the--I do not like to use the words, "the other side" because the more I listen to you the more I feel there may be less of another side and more of a compromise here than we first suspect--a lot of the complaints will be on the investigation side and the independence of the investigator. What I am hearing you say is that is not a major problem with you. Therefore, if there were a compromise, justice would not only be done, but also be seen to be done by the complainant. Since the anxieties of the complainants are often about the investigation side, there may be an area where you and the Civil Liberties Association and other groups like that might in fact be willing to compromise on the investigation, who the investigator is, as long as he is properly trained and who he reports to.

Mr. Walter: Three years ago I may have said--maybe I would not have said it, I don't know--"Let's give it an opportunity."

Our members' anxiety is very great with regard to continually being under the gun as it pertains to citizen complaint procedure. They want the procedure enacted. This bill basically provides the proper arena and avenues to have a citizen's complaint effectively investigated and impartially adjudicated. That is what we are looking at.

Mr. Philip: If we were to make some changes in the

direction you suggest in terms of adjudication, you would not be all that unhappy if we also made changes at the investigation side in the direction some of the other organizations are asking for? Is that what I hear you say?

Mr. Walter: Are you saying a separate or different form of adjudication as opposed to what is described here?

Mr. Philip: The proposals you are making, safeguards with the information that is collected. Proposals one to three is what I am referring to. If that were--

Mr. Walter: Actually one to four.

3:30 p.m.

Mr. Philip: One to four, sorry. If that kind of thing were done, and at the other side, though, the manner in which the investigators, who they reported to, the "impartiality" of them were to go in the other direction, in the direction in which some of the community groups go, you would not be all that unhappy.

Mr. Walter: You are saying the community groups--the community groups who initially come to mind are physicians, are lawyers--usually any professional group is investigated, and, for the most part, adjudicated by their peers. Because of the police profile, and generally the police individually not being able to respond because of certain restrictions which are placed on them, we are a very good target for almost anyone, whether it be the press, or politicians, or whether it be from minority groups, whoever, or self-appointed spokesmen for minority groups.

As far as the investigation is concerned, I would, again, reiterate that in my view, at this particular juncture, that it should be in-house with adjudication coming from a different area, as opposed to internal.

Mr. Philip: Since you have made that statement, I guess there is no point in pursuing it any farther. I would suggest to you that the peers, who these people are advocating, are peers in the sense of qualification.

If you look at some of these professional organizations that do license or remove licences; they are not synonymous with either the union or the management of that particular profession. The College of Nurses, for example, is quite distinct from the Ontario Nurses' Association, or, indeed, from any hospital that hires the nurses.

Therefore, if you are going to use the analogy of an examination of peers, then surely "peer" would be defined by the professional qualification of the investigator, and on that, I do not see where you are differing at all from the Civil Liberties Association or any other group which says that we want qualified investigators who have professional ability.

He has made his position and I think it is clear.

Mr. Chairman: Thank you. Mr. Elston.

Mr. Elston: I just had a few comments and they are getting into specifics of suggestions which were made earlier this morning by Mr. Borovoy, sort of coming along the same line, I suppose, as Mr. Philip.

Earlier this morning Mr. Borovoy suggested that the provision which allowed a decision by the public complaints commissioner to go into an investigation early remain unfettered. In other words, section 14(4) be removed. That gives an opportunity for the police to take the commissioner to court to determine whether or not he should be going into the investigation. Would your association feel threatened if, in fact, that was removed from the legislation?

Mr. Walter: Initially my response was--I do not know. As far as the association being threatened, it does not present any major concern to me in this regard.

Mr. Elston: In other words, it would fall in line with your idea that the adjudication be impartial--

Mr. Walter: Yes.

Mr. Elston: --and independent. As far as you are concerned, as long as he wanted to step in and if he made a decision, you would be happy with that, instead of taking--

Mr. Walter: You are saying the complaints commissioner stepping in at an earlier stage.

Mr. Elston: Yes. That is right.

Mr. Walter: I do not have any difficulty in that area. As far as adjudication is concerned I do. But I do not know--you are confusing the--

Mr. Elston: But as far as his going in early, if he decided to, you would not be unhappy with him.

Mr. Walter: The complaints commissioner, not an adjudicator.

Mr. Elston: That is right.

Mr. Walter: No.

Mr. Elston: The complaints commissioner.

Mr. Walter: Right.

Mr. Elston: Okay. It was also suggested that the public complaints commissioner be required to endorse any informal resolutions of problems which were arrived at. Do you see that as being either a helpful step or a hindering step in terms of the overall process of the complaints procedure?

Mr. Walter: It may be somewhat of a hindrance. Really what he is doing is second-guessing the unit commander or staff sergeant and the officer and the citizen who made the original complaint. I think what he could do if he felt--

Well, maybe we could deal better with examples. My initial reaction is that yes, it is somewhat cumbersome, that people then will be second-guessing themselves.

Let's say there was an altercation and the officer swore at an individual--called him a particular name--and that individual complained. They resolved it by a handshake and some open and frank discussion, but then the complaints commissioner, for whatever reason, felt "No, we should proceed with this"--and I'm not talking about one of the exclusions that we have talked about before. I find it difficult--

Mr. Wrye: Could I just have a supplementary to this? Can you not see, though, as Mr. Elston is suggesting, that the problem you may run into is that if the PCC--who, after all, will see this informal resolution come across his desk--takes a look at it and says, "I don't like the way this was handled," even if he says it to himself, if he says it several times all of a sudden he begins to lose perhaps a little respect for the inspector who's running the bureau.

Would it not perhaps be safer for the inspector not even to be second-guessed privately by the public complaints commissioner? Let the commissioner make the final decision as to whether the informal resolution of the complaint was truly a satisfactory resolution, but don't undermine the staff inspector who is running the bureau. That would be my concern.

Mr. Walter: I'm wondering, then, in that regard: It may be a hell of a chore to define what really is a major offence and what is a minor offence, what would go to a three-person tribunal as opposed to being adjudicated by one individual. Those complaints that would normally be major could not be resolved informally with a handshake but would, in fact, have to be proceeded to and be received by the public complaints commissioner. The minor offences or the minor allegations themselves could be resolved informally and maybe they would have to be spelled out.

Mr. Wrye: I am concerned about a case where, let's say, it is not a major offence but it is an offence about which, after looking at the paperwork that has come across his desk, the public complaints commissioner would say to himself: "I don't think this should have been resolved. It looks as if the resolution was arrived at under some duress," or whatever. "I think the police officer had a good case," or alternatively, "I think the complainant had a good case." But he's unhappy. I guess that's the bottom line: he's unhappy no matter how serious the complaint was at the outset.

Do you not see that he could have very quickly come into conflict with a person with whom, after all, he was going to work

day in and day out and with whom he has to have the greatest level of confidence?

Mr. Walter: It's an interesting point that you have raised. I don't actually see it taking place, though; theoretically yes, but in practice I don't think that type of situation would actually surface.

Mr. Elston: Is it the case now, generally speaking, that minor--if I may put it this way--minor complaints or minor incidents are generally perceived to be those that have been settled by a handshake or a frank discussion or whatever, and actually the ones that are now major are the ones that go on beyond the handshake process?

3:40 p.m.

Mr. Walter: Right now the minor complaints that are settled informally--although there were some comments: it all depends on what you mean by "informally." As far as a handshake is concerned, very few are resolved at that level now simply because everyone within the force, particularly in the lower ranks, are second-guessing themselves, and it's better to pass the buck than to let it stop at yourself.

It's better to say, "Well, it's not up to me; let's put it up to the complaints bureau." They investigate it, and by the time they're through with their investigation the complainant has long since forgotten what he had originally complained about. But it has made its way through the system quite unnecessarily, because individuals are afraid or reluctant to let the buck stop there.

Mr. Elston: I guess what I was getting at was that I think at one point or another it has been suggested that maybe somewhere well over 90 per cent of complaints are capable of solution informally without going through the process, and that maybe it's only three, four, five or six per cent or whatever that will eventually get in through the other way.

I presume that all those that are capable of informal resolution are perceived to be minor. I gathered from discussing it with various people that that was the way, and that any which then passed on through the five or six per cent are then deemed to be at least major complaints. I don't know whether that's right or not, but for some reason I'm looking at this definition of what is major and what is minor and what should be going in front of a three-man board and what should go to a one-man board.

Mr. Walter: And of course that really will be a determination made by the police complaints commissioner.

Mr. Elston: And if the PCC is involved in the informal resolution of matters he might be in a better position, might he not, to deal with the individual who has had a series of these informal solutions to complaints. If he were involved in the procedure whereby he saw that each complaint was settled by a handshake he would know if that individual officer was coming back for the fifteenth or tenth or whatever time.

Mr. Walter: Oh, yes. That's what we said earlier: that it would be properly documented as far as the PCC is concerned, that he can keep a record of trend patterns for the individual officer or that particular unit or even a district, for that matter.

Mr. Elston: So then a minor complaint might well become a major incident in terms of past behaviour.

Mr. Walter: Yes. Well, you're talking about the cumulative effect of a lot of minor ones--does that make a major problem?

Mr. Elston: It's the chronic idea that was discussed.

Mr. Walter: Yes.

Mr. Elston: So you would probably not be too opposed if the PCC took a major role sort of as the independent person in keeping track of individual officers rather than seeing it go to any other particular area. You would like him to keep the records.

Mr. Walter: Yes.

Mr. Elston: And keep it away from what might be termed management, I presume?

Mr. Walter: Yes, unless it's found that there are certain problems. There are 5,300 police officers; we're not operating at all times at 100 per cent efficiency or effectiveness, and there are problems. We recognize that.

Mr. Elston: I'm not trying to form an unholy alliance or anything here, but I do have a summary of some of the recommendations that were put forward to us this morning by Mr. Borovoy on behalf of the civil liberties union.

I have noted three or four areas of similar endeavours by each of you. One deals with funding for the civilian complainant to go through the procedure; you speak of the need for funding for the police officer.

There are several other areas, I think, where you might be able to come up with at least no objections, or if you can't find any areas I wonder if you might comment on some of the ones that become obvious, those that you either like or do not like in those suggestions.

Mr. Walter: This is the first time I have been exposed to the summary of recommendations.

Mr. Elston: Perhaps we could give him an opportunity to get back to us.

Mr. Chairman: Mr. Elston, I believe that list has perhaps 20--in that area--recommendations or suggestions. Perhaps it could be put in writing to the committee rather than dealt with today.

Mr. Elston: Yes, that's fine. I thought that there were two or three areas in there which could be readily identifiable. I didn't expect him to--

Mr. Wrye: You might give him page two, which includes some recommendations I'm sure you will like.

Mr. Hilton: Seriously, Mr. Chairman, I think he should be given the whole brief if he is going to be asked to comment so that he doesn't just get excerpts like this.

Mr. Piché: I was going to say I think you have the brief already.

Mr. Walter: No, we don't. Perhaps it was offered, but--

Mr. Chairman: Mr. Elston, since you have referred this to Mr. Walter perhaps he could direct his response back to you rather than to the committee as a whole. Is that the end of your questions to Mr. Walter?

Mr. Elston: Yes. Thank you.

Mr. Philip: Mr. Chairman, it would be more appropriate if it were directed back to the clerk of the committee and supplied to all of us. I think the views of the police association are valued by all of us.

Mr. Elston: I will certainly make it available to the committee if it's directed to me.

Mr. Chairman: Then it will come back to the clerk? Fine. Thank you.

Mr. Hilton, you wished to respond to one or two things.

Mr. Hilton: Thank you, Mr. Chairman. I have listened to the remarks of various members, and a couple of things have occurred to me. One is in relation to the informal resolution of circumstances that might be reviewed by the PCC. I refer members of the committee to section 14(1), which states:

"The public complaints commissioner (c) may review the record of the informal resolution of a complaint and may request that the person in charge of the bureau cause an investigation to be made into the complaint."

In other words, if there is an informal resolution and after the informal resolution the person feels that he has been subjected to some unusual pressures he can then bring that to the attention of the complaints commissioner, who then can look at it with that in mind. So I would hope that the concerns of Mr. Wrye might possibly be answered by the provisions of that section.

This morning Mr. Borovoy made some remarks about the courts. I have confidence in our courts; by the use of judicial review our courts can consider the propriety of a solution, an action or a

procedure. I am quite confident that our courts can work out and determine that which is appropriate in any circumstance.

Mr. Philip made a remark that I feel is entirely appropriate: that justice must seem to be done. But justice must seem to be done, I submit, gentlemen, not only from the side of the complainant but from the side of the police officer, who has possibly put 10 or 12 or 15 years in the service of the public in this job; it must be seen to be done so far as he is concerned, his wife is concerned, his children are concerned and his family is concerned.

So it is my respectful submission that we must look at this thing from both sides, and that the resolution, whatever it may be--and we have endeavoured to do this in the legislation--is just, not only to the person who comes up and starts waving a flag in relation to a particular complaint that has arisen out of his anger and without regard to how it may affect the future of the person against whom he complains; it must be fair in relation to the police officer involved.

Mr. Philip: No one was suggesting otherwise.

Mr. Hilton: I'm sure you weren't, sir, but it just came out that way, and it may be perceived by--

Mr. Philip: On the contrary: What I was pursuing under three was a way of meeting some of the concerns that were being expressed.

Mr. Hilton: Perhaps I misunderstood you, sir, but if I misunderstood you perhaps others misunderstood you. I only submit that. I would just ask that you keep that in mind.

Mr. Philip: (Inaudible).

Mr. Hilton: The other and last matter that I would like to comment on is a rather broad matter. In these circumstances we tend to focus on the larger events that are the subject of complaints.

As has been pointed out already and realized by the members, in 1980 there were something over 800 complaints in Metropolitan Toronto. Of those 800 complaints, over 90 of those complaints were resolved in an informal way. If that is so, the emphasis that might be placed in our thinking and quite logically so placed in our thinking, on the larger circumstances, can carry our thinking beyond that which is the day to day circumstance, I submit, which this bill will be meant to cope with.

3:50 p.m.

Out of the larger complaints I think you have to carve out those complaints which have criminal law implications. I think of the Albert Johnson circumstance where there was a possibility of criminal charges and, indeed, criminal charges did result. These sort of circumstances narrow that plus-90 resolution substantially.

This act in no way takes from any police force, or all police forces, the obligation to resolve criminal circumstances that relate to the members of their force. They will do so as they have done in the past. The history of Toronto has been particularly great in relation to the resolution of informal and, indeed, the prosecution of serious criminally involved complaints.

What we are here talking about, really and truly, is a very narrow--I submit about five per cent of all complaints--and I would ask you in your consideration over the next two weeks not to allow your minds to centre only on those that are grievous.

Where you have 5,000 or 6,000 men and women involved, you are inevitably going to find complaints, but this is a force that historically has resolved its own complaints, has now found with the mix that has come into our community, has now found with the complexities of our size, that another procedure is needed, and it is hoped that this bill will supply the answer to that.

But let us do it without adverse effect, either upon the power of the chiefs and the power of management or the pride, the resolution and the greatness of the man on the street who is performing the very difficult job that is obliged in the police complaints. I have just noted in remarks the tendency to focus on these sort of extraordinary circumstances and not the matters that will be daily dealt with by this bill.

Mr. Piché: You just mentioned 90. Do you mean 90 per cent?

Mr. Hilton: Ninety per cent.

Mr. Piché: I have a couple of questions. One of the questions I have is, when there are 800 complaints against a police force, that there might be something wrong with the system? If 800 complaints come in, I stress there might be, I am not saying there is.

Mr. Hilton: If there were 800 complaints in Kapuskasing, Mr. Piché, I would think there was something terribly wrong, but when you have the millions of people--

Mr. Piché: Yes, but you have still got 5,300 policemen in Metropolitan Toronto.

Mr. Hilton: When you have that many people, and you have millions in Toronto, and you have 800 complaints, I will think, and I dare say those who have explored this can back me up and I am so advised, that among the municipalities of our size in North America, we are perhaps the smallest in complaints of any.

Mr. Piché: What about the Ontario Provincial Police, who have a similar size, I think it is around 5,000. How many complaints a year do we get?

Mr. Hilton: We do not have that many, Mr. Piché, with the OPP, but the OPP is dealing with an entirely different circumstance. It is dealing with rural communities. It is dealing

with communities where the officer knows the person and the person knows the officer. The communities are smaller where there is a personal relationship and obligation. The anonymities that allow for those things that are the basis of complaint do not exist in the OPP circumstance.

Mr. Piché: How many do you get from the OPP, do you know?

Mr. Hilton: I cannot tell you exactly. If you like, I will find that out for you.

Mr. Elston: I just have one question. Among the concerns that were expressed here this morning was that the danger does not really exist from the ones that have been resolved. The danger exists to the society from those people who do not feel they can come forward.

How is this system going to make them feel more comfortable, apart from having Mr. McMurtry already tell us that they can initially go to the commissioner directly if they wish? Other than that, how do we make those people feel comfortable with putting the complaint before this procedure? They still have to go to the police. If they are afraid of them, how do we help them with that?

Mr. Hilton: I submit that at no time do they have to go to the police. They can work through the police complaint commissioner. They come to him, they make the complaint to him.

First of all, I do not say anyone is justified in that fear because I have not found that fear to be real, but it is in existence in some people and we cannot change it, so we have to do something about it.

Mr. Elston: Have you had personal experience? You have had personal experience with people who--

Mr. Hilton: When I was in practice, yes, I did.

Mr. Philip: If a fear exists, how can it not be real? That is a contradiction if I ever heard one. If Mr. Piché feels that he has got a fear--

Mr. Hilton: Wait a minute, you are just playing with words.

Mr. Philip: No, I am not, you are playing with words.

Mr. Hilton: I mean justified. The fear is not justified but the fact of the matter is that we do know that fear does exist, so that is why an alternative system has been devised whereby they can go directly to the PCC.

It is in an effort to do that that this pilot system has been set up and it is our belief that by removing its physical location from a police station or a police headquarters or anything similar to a police circumstance, that it will assist those people to come forward and make them feel more comfortable in coming forward. Then the PCC will hand it on, but he at all

times has a supervisory power to see that the investigation is being carried on, to see that it is being carried on expeditiously and fairly.

Mr. Elston: With the permission and blessing of the chief of police at this point.

Mr. Hilton: No, even before that.

Mr. Elston: He can get in early if he wants but it is only if the police chief or whoever decides that he is not going to take him to court to substantiate the reason for getting into the investigative procedure early.

Mr. Hilton: That may be so.

Mr. Elston: That may be so and it seems to me that is one of the areas we could help people remain very comfortable with.

Mr. Hilton: The fact of the matter is he is there and eventually the chief knows that he has to answer through the PCC and, if he eventually has to answer to him, why not do it promptly?

Mr. Elston: Why not let him go right ahead from the initial stage when the PCC wants to get involved in it?

Mr. Hilton: There would be a duplication. I suggest to you in fairness, if I accused you or you accused me of something, common human justice requires me to go to the person accused first and allow that person to resolve it. The proof of that is in the over 90 per cent resolution.

Mr. Elston: But our field of adjudication of our complaint against each other may be through a third party who we perceive to be unbiased.

Mr. Hilton: It may be, but likely it is not.

Mr. Philip: Resolution does not necessarily mean something that is satisfying to both parties. It may simply mean that one party backs off because he does not think he is getting anywhere or because he does not have faith in the system.

Mr. Hilton: I hear you.

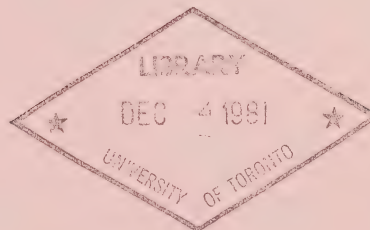
Mr. Philip: If you can make sermons then on days that are not Sundays, so can I.

Mr. Chairman: Since it appears there are no more questions, I thank Mr. Walter for his presentation. It would appear that ends the proceedings for the day and we will resume in this room at 10 o'clock tomorrow morning.

The committee adjourned at 3:59 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
WEDNESDAY, SEPTEMBER 23, 1981
Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
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Ritchie, J. M., Director, Office of Legal Services

Witnesses:

From the Mayor's Committee on Community and Race Relations:
Acheson, S., Member; Member, Ontario Federation of Labour
Eggleton, Mayor A., Chairman; Mayor of Toronto
Hill, D., Special Adviser
Hope, Y., Member; Alderman, City of Toronto

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, September 23, 1981

The committee met at 10:10 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Toronto Police Force.

Mr. Chairman: Gentlemen, we have a quorum now in the room; so we might carry on with the next witness, his worship Arthur Eggleton, the mayor of Toronto. Your worship, would you wish to identify the people assisting you?

Mayor Eggleton: Yes, with pleasure, Mr. Chairman. The people who are with me today are involved with the mayor's committee on community and race relations. The gentleman who is now sitting on my right is Dr. Dan Hill, who is special adviser to the mayor's committee. On my left is Alderman Ying Hope, who is a member of city council as well as a member of the mayor's committee. Shelly Acheson from the Ontario Federation of Labour is also a member of the mayor's committee.

The mayor's committee is where this matter of Bill 68 first received consideration at the city level. I might just mention that it is a committee which was established earlier this year. I proposed to Toronto city council the establishment of this committee, which pretty much has a threefold purpose. One is to combat racism, the second is to improve police community relations and the third is to promote equal opportunity in the civil service.

The initial focus of the committee has been with regard to visible minorities. Most of the composition is people who are from various visible minorities or people, such as Shelly Acheson from the Ontario Federation of Labour, who are concerned about matters of human rights.

The committee considered the matter on April 14, at which time we were dealing with a previous bill, Bill 47, which has now come out in Bill 68, and subsequently city council dealt with the matter. The comments that I make are relevant to both the previous draft as well as the present bill.

The committee drew upon a number of resource people for information and had presentations made to it. Mr. Arthur Maloney, for example, who has dealt with the question at considerable length, was before us and assisted us. There were representatives of the police department and the police association. We had presentations from such organizations as the Canadian Civil

Liberties Association, represented by Mr. Borovoy, who was here yesterday.

The committee made five recommendations to city council--I will go through those--then city council added a couple more.

The first recommendation is that the Lieutenant Governor in Council take into consideration the ethnic and racial composition of Metropolitan Toronto in appointing a police complaints board, with particular emphasis on visible minorities.

It was felt by the mayor's committee, and city council concurred, that when that complaints board is being established, it should try to reflect the composition of Metropolitan Toronto as it is today. Since much of the start of the concern or the thrust of setting a public complaints process in action has come from many visible minority groups, it was felt that we should ensure that there is some representation from them. We felt that would very much improve public confidence in the complaints board process.

The second recommendation is that the Ontario government provide that a finding of misconduct against a police officer for employment purposes need not require the criminal standard of proof beyond a reasonable doubt. This was really an endorserment of a position brought to us by the Canadian Civil Liberties Association; they expand upon it in their brief. We felt that made sense, that really something more along the lines of the balance of probabilities would be more reasonable.

The third recommendation is that the Ontario government provide for police officers the following safeguard: As a condition of being required to furnish reports on their activities, they should be given prior notice concerning the substance of any accusations against them and a reasonable opportunity for prior consultation with an agent or counsel. Again, that was an endorserment of a civil liberties association recommendation.

The fourth recommendation is that the police complaints board hearings be made public. We were not quite clear whether that was the intention of the bill, but we felt that unless there are extraordinary circumstances which would warrant in camera hearings, they should be conducted in public.

The fifth recommendation--and this is really the main point of contention and concern on the part of the mayor's committee and of city council--is that an independent investigation of all civilian complaints against the police be provided right from day one.

Many of the organizations that for a long time have been urging this public complaints process are saying to us that they feel there has to be an independent investigation from day one; not only must justice be done and seem to be done but also there must be a perception that there is an independent eye watching the process and conducting the process of investigation. Both the mayor's committee and city council feel that should happen from

day one, rather than the proposal in the bill that the police conduct the investigation from day one.

City council, having received those five recommendations, made the following decisions:

First, that city council emphasize the need for provincial legislation at the earliest opportunity to improve methods of processing complaints by citizens against officers on the Metropolitan Toronto Police Force. We want to have the bill as quickly as possible.

Second, that city council endorse the recommendations of the mayor's committee on community and race relations--that is, the five that I just read to you.

Third, if recommendation number five of the mayor's committee report--that is, for an independent investigation from day one--is not acceptable to the provincial government, that consideration be given to the alternative proposal that the office of the public complaints commissioner monitor the investigations and that the commissioner make the decisions with respect to the disposition of the reports. The preference of the mayor's committee and that of city council was that the investigations be conducted independently under the direction of the public complaints commissioner from day one.

In the debate that has gone on for some considerable months on this matter there has been the suggestion by the Solicitor General and by others that it should be the police conducting the investigation from day one themselves. If that is to be the case, what we are suggesting here is a monitoring. The bill does provide for some monitoring in respect of receiving reports, but what we are suggesting is a step further: that the monitoring be in the form of physically being present during the investigation. In other words, the public complaints commissioner may assign somebody from his office to accompany or be with the police when they are conducting the investigation.

Again, I emphasize that city council considers that only as a second choice to a completely independent investigation from day one.

With those few remarks--we will shortly be able to give you copies of those particular resolutions; they are on their way up--I will be willing to answer any questions, Mr. Chairman.

Mr. Chairman: Thank you, your worship. Mr. Minister, do you have any comments?

10:20 a.m.

Hon. Mr. McMurtry: Yes. I think the principal issue once again, Mr. Chairman, is whether or not the police do the initial investigation, monitored by the civilian complaints commissioner, with a possible independent investigation at a later date. I would like to direct my remarks with respect to that particular issue,

whether or not the investigation should be taken over the first day.

I guess you are aware, Mayor Eggleton, that this issue has been debated over some years. There are a number of commissions that have looked at this issue. I am thinking of Mr. Maloney's commission; Judge René Morin's commission on the RCMP that reported in 1976, which endorsed Mr. Maloney in this respect; Cardinal Carter's study; the McDonald commission report; and the UK Parliament. They looked at this very exhaustively and all came to the conclusion that in the first instance the police should be given the opportunity of doing the investigation.

Was your mayor's committee aware of all of these very extensive commissions and studies in addressing this issue?

Mayor Eggleton: Yes. It really was very much aware of that. But in order that there be public confidence, and that the various segments of the Toronto community which have been most concerned about this feel that confidence, the committee felt there had to be independent investigation; that justice not only be done but be seen to be done; that there is a perception that everything is being handled and watched over by somebody who is independent from the police force; that nothing is being covered and nothing is being lost. That is a very important part of it, because if those communities do not think they are getting that kind of protection from this bill, then I think its chances of success are considerably lessened.

We are not suggesting that the investigation be conducted by amateurs, by any means. There are many professional investigators, people who have a great deal of training as police, who could be very much involved. Certainly various commissions of inquiry that have been held in the past--the Morand inquiry, the more recent McDonald inquiry with respect to the RCMP--have involved independent investigators and people who are very professional and know what they are doing. A lot of information and a lot of evidence was gathered by those people that was very helpful to those commissions. An independent investigation can be most professionally dealt with, and that is what we are suggesting.

Hon. Mr. McMurtry: I just want to have you clearly on the record, mayor, that you disagree with the recommendations of those six bodies I have just referred to.

Mayor Eggleton: City council and the mayor's committee feel there should be an independent investigation from day one. As I said, the council has added to that a recommendation that, if the provincial government is not willing to do that, there should at least be a very close and physical monitoring involvement right from day one.

Hon. Mr. McMurtry: I think you are well aware of the views of the chief of police in this regard. Mr. Jack Ackroyd, who will be appearing before this committee, has expressed the view, I believe publicly, I believe to you--certainly to me--that if the police do not have the opportunity of policing themselves in the first instance, of doing the initial investigation, he feels this

will significantly undermine discipline within the police force. You are aware of his views in that regard?

Mayor Eggleton: Yes. I have heard those views.

Hon. Mr. McMurtry: You disagree with them, obviously.

Mayor Eggleton: Yes, I do. In the case of the police investigating the police, one of the difficulties I find is that perhaps the police can be very much harder on their own members. I think they would accept, if it were put in place, an independent investigation. I think that would certainly be fair to them as well as to the people who are complaining about different actions of officers.

Hon. Mr. McMurtry: Knowing, as you do, that this is a very critical issue for our chief of police in Metropolitan Toronto with respect to maintaining internal discipline in the force, and notwithstanding his strongly held views, which he will be expressing to this committee, you are still not prepared to support him in this respect?

Mayor Eggleton: I very much support the police department. I think they are doing a fine job. I think in this particular case, though, there should be investigation from day one. If that cannot be accommodated, then city council has made the alternative suggestion.

Hon. Mr. McMurtry: I think you are aware that, under the chairmanship of Chairman Godfrey, this bill has been discussed with all the mayors of Metropolitan Toronto, the cities and boroughs. From what I have been able to learn--and perhaps you can assist me, Mayor Eggleton, because this is what Chairman Godfrey has indicated to me--all of the other mayors support the bill in its present form. Am I correct in what I have been told by Chairman Godfrey?

Mayor Eggleton: I do not know about the other mayors. Certainly, Chairman Godfrey does support the bill, as I understand it. I have not talked to the other mayors about the matter. We are not saying that we do not support the bill. We are saying that one change--it is a very fundamental change--should be made. I think the other recommendations made are not in any way showing a lack of support for the bill, but they are suggestions of modifications to the bill and most of them should not be considered to be major changes in the thrust of it.

The one recommendation that is the most contentious, of course, is the matter of the independent investigation from day one. We happen to think that, with that modification, the bill would be quite acceptable.

Hon. Mr. McMurtry: I think you are quite aware that this is a very crucial issue, and really my view goes to a very important principle of the bill; that is, whether the police are going to retain the responsibility in the first instance of policing themselves, as many other professions do.

I want you to know I regard this as a matter of some substance that touches the heart of policing in this community. And that is the view of the senior police officers; they regard it critically enough as directly related to whether they are going to continue to be able to provide effective policing in this community, given the importance of internal discipline, which they feel would not be possible unless they had the opportunity to do the initial investigation. I think it is important that you totally appreciate how strongly they feel.

Mayor Eggleton: I guess I just do not agree with that.

Hon. Mr. McMurtry: That's fine. I just wanted that to be perfectly clear.

Alderman Hope: I would like to respond perhaps in an added fashion to that, Mr. McMurtry. Quite aside from the independent investigation aspect, when it falls into the lap of the police complaints board subsequently, you have to recall that the board is made up of three sectors.

One sector, of course, is appointed through the Lieutenant Governor in Council, and these are people with legal training. Second, one third is to be appointed by the Solicitor General on the advice of the Metropolitan Toronto Board of Commissioners of Police and the Metropolitan Toronto Police Association. The third one, of course, is recommended by the Solicitor General on the advice of Metro council. So you have a third which is already appointed through the advice of the Metro police commissioners and the Metro police association. There is equity there already.

What I am afraid of is this: While we all know the police force in Metropolitan Toronto is doing an excellent job, in the end when it does go before the board, it should not look like it has loaded dice in favour of any particular police person who is under inquiry. You already have that built in with the board, and all previous studies--Mr. Morand, Mr. Maloney, et cetera--do not refer to this composition whatsoever. I think that is a point we should add.

10:30 a.m.

Hon. Mr. McMurtry: With respect, Alderman Hope, the issue that has been addressed by all of these commissioners and people, including the United Kingdom Parliament, which reviewed this exhaustively, is the effectiveness of an investigation that is done by an independent group of investigators in the first instance outside of the police force; and, as I say, the view of all of these studies was that it will not work, because of the nature of policing.

I appreciate that you prefer your own collective wisdom to that of these various people who have looked at this, I think very carefully, and it is obviously your right to disagree with them. But it is a very crucial issue.

Quite frankly, in fairness, this is not just a matter of internal police discipline in isolation. It is internal police

discipline as it relates to dealing fairly with members of the community. Without this pretty high standard of internal police discipline, it has been the view of police authorities everywhere, and those who have looked at the matter carefully, that the public are the people, of course, who are going to be the principal losers.

For example, we have the experience of many other jurisdictions where independent investigators were established to look at all complaints from day one. Notwithstanding the fact that 90 per cent of these complaints in Metropolitan Toronto are resolved informally, and many people feel that by injecting an independent group of investigators--it is the attitude of police authorities that would significantly impede or handicap the informal resolution of many of these complaints. That is a crucial issue from the standpoint of the citizens.

In any event, leaving that aside, the experience in virtually every other jurisdiction we have looked at, every jurisdiction we are aware of at least, is that, where independent investigators are given responsibility from day one, given the nature and the human dynamics of policing, an atmosphere of confrontation is created, a highly adversarial attitude, with the result that outside investigators independent of the police often have a very difficult time finding out information that an internal police investigation would uncover. That simply has been the experience of many other jurisdictions, and I am sure you are aware of that.

Mr. Hill: I just wanted to make two points. One that I consider the committee should look at most carefully is, you now have in Metropolitan Toronto well over 400,000 visible minorities. That is the figure I get from York University and other places. You have blacks, Asians and Indians. The thing that I think distressed the mayor's committee was that we do not see any of the representative organizations among those 400,000 people coming out in support of this bill. We wonder about that. They cannot all be kooks and oddballs and nuts.

We are certain there are representative organizations among those 400,000 people who now inhabit Metro, and we are wondering why they have not come forward. This concerns us. The reason they have not come forward, some of them claim--I am not speaking for all of them--is the perception of justice. You have to have that perception of justice; they doubt it if you do not have independent review.

You have a situation in the United States, which we refer to when we talk about this bill, where they have independent review there. I think it is kind of distressful to compare the US to Canada. I do not think we have reached the place in race relations in this country that they have in the United States, and the failures in the United States should not be equated with what might happen here. I think we have a different country, a different system of justice and a different way of approaching these things.

Mr. Philip: And a different police force.

Dr. Hill: Yes. And I do not think we have those mammoth problems. I think it is not fair to equate those two countries in looking at this. So I would just stress that we are worried when 400,000 people do not come out and support this bill, and I think the committee should look at that.

Hon. Mr. McMurtry: Dr. Hill, you are obviously a gentleman who I have the highest regard for, as you know, and one who I am very happy to seek advice from on any occasion. But I would like to make the observation, with the greatest respect, that in my experience of working with visible minorities, and having spoken to a large number of people who might be generally regarded as members of visible minorities, the great majority appear not to be active in any particular association that gets involved in these issues.

I think this is one of the problems we have in the community because it has been my experience that the great majority of people who are members of a visible minority are not actively involved in the associations that are taking a public position in this area.

Mr. Philip: Is the Solicitor General trying to say that the views of these groups are not representative of the populations they pretend to serve?

Hon. Mr. McMurtry: Yes. To a very large extent that has been my own personal experience.

Mayor Eggleton: Let me say that the membership of the mayor's committee on community and race relations, by and large, comprises people whom I would not consider radical in their views. Most of these people are very moderate in their views, and they are leaders of different parts of the visible minority community. They all feel quite strongly about this issue. It is their organizations, to a great extent, that brought attention and focus on this issue and said there needs to be this public complaints process. They are not satisfied with the bill.

Dr. Hill: To give you an example of what the mayor is talking about, the mayor's committee received a letter--and you cannot overlook this--from the church and the congregation of the Grant African Methodist Episcopal Church, primarily a black church. That church has been in this city, I must say, since 1850. It is made up of respected people and well-known citizens. It has its roots in this city since 1850.

They sent a letter, and these are old and young, saying that they were distressed by this bill. That is certainly not an oddball.

Hon. Mr. McMurtry: I do not know who characterized them as oddball. But I will give you a personal example. I met some months ago with representatives of the Black Coalition of Canada, ladies and gentlemen who all would be very well known to you, and one of their principal objections as communicated to me on this particular occasion was that people who had grievances against the

police would still be forced to go to the very police department directly against whom they had some concern.

I pointed out to this particular delegation that, of course, the bill did not require that. Under the details of the bill, with which you are familiar, the person can go directly to the commissioner for citizens' complaints and deal with that particular office so far as making the initial complaint. It was not necessary to go directly to the police department.

They simply said, "We were not aware of that." That does not meet totally their concerns, but it certainly addresses a very significant concern. They said, "We just did not realize that was in the bill."

I said, "Well, perhaps some of your membership could be advised that there are some aspects of the bill that you are not aware of, and you could take an opportunity to review this with them."

Their answer was: "Really, it would not be possible. We have taken our position publicly, and that is the way it is." I am not being highly critical of this group at all. It is very much part of what happens with any organization.

I think it is an illustration, and I say again to you, sir, as a gentleman for whom I have nothing but the highest regard, that it has been my experience in talking to many hundreds of people in the visible minority community during the past year that there is very significant misunderstanding as to what is contained in the bill. That is my problem, and that is all of our problem, because it is true that we are dealing with a perception. In politics we have to deal with perceptions as seriously as we deal with any reality.

10:40 a.m.

But I don't wish to debate this with you or suggest that anything you have to say is not very well founded. I am just sharing my own personal experience on this very sensitive issue. I would be interested if the committee could point to a jurisdiction which has a system working now which you believe is preferable to what is envisaged in our legislation, Bill 68.

Mr. Philip: What he is saying is that Ontario always has to follow somebody else.

Interjections.

Mr. Chairman: Mr. Philip, I think that was perhaps an unnecessary shot. Doctor, do you want to respond to the minister on that?

Dr. Hill: The only way I can respond to that is to say, in spite of all the controversy that is raging over the Ontario Human Rights Code now, we looked to other jurisdictions in Canada and other places. In 1951, Leslie Frost said: "Let's come in with it. No one else is doing it." So we led the way. We started it. We

didn't look to any other jurisdictions. There was no other jurisdiction. We led the federal government and we led all of the provinces. So I am saying a little encouragement might be needed here.

Hon. Mr. McMurtry: We hope we are going to be doing the same thing with this bill.

Dr. Hill: Let me add one other point in respect to that, Mr. Minister. I don't think the public and the minority groups are saying to throw out the baby with the bath. I think the direction is good. I really feel that way, and I think the mayor's committee feels that way: the direction is good. They are not saying to throw out the baby with the bath. They are not saying to throw out the bill. They are saying to modify it. That is a good direction.

In answer to the first question, Ontario has led in the past; Ontario should lead in the future.

Hon. Mr. McMurtry: Thank you. I wonder if I might ask, Dr. Hill; on many occasions you have shared very wise counsel with me. On one occasion you made a statement that I think makes a great deal of sense. In debating legislation, I think you said something to the effect that quite apart from the legislation, which is of course important framework, the success or otherwise of any such project is going to depend to a very large extent on the people who are given the responsibility of running it, quite apart from any issues we may have over the legislation. Am I quoting you correctly, sir?

Dr. Hill: Yes. I made that observation on legislation in general; given the right kind of people and, you might make something out of it, even the worst legislation.

But let me say this too; I want to make this point, Mr. Mayor, ladies and gentlemen. I want to speak very favourably of Mr. Sidney Linden. I don't want to put that into the context of the bill or of my criticism of the bill. But in terms of Mr. Linden I have the highest regard for him as a civil libertarian and for his appointment. In that sense I credit the government for that appointment. He is a fine person. He is excellent, and I hope he can do something here. He is a most credible person and an excellent lawyer.

Hon. Mr. McMurtry: I very much appreciate that statement. Hopefully he won't have to work with what you believe to be a flawed bill.

Mayor Eggleton, does the mayor's committee generally share Dr. Hill's view of Mr. Linden?

Mayor Eggleton: The only comment the mayor's committee made on it was to feel that it was premature, that the bill and the hearings should be dealt with first. That was the position of the mayor's committee. It did not address itself specifically to the question of Mr. Linden. Certainly I personally share Mr. Hill's comments on Mr. Linden.

Hon. Mr. McMurtry: Thank you.

Mr. Chairman: Thank you very much, your worship. Mr. Breithaupt.

Mr. Breithaupt: I have just one or two questions to ask, Mr. Chairman. From what you heard this morning, Mr. Mayor, you know the views that you expressed, and that have been expressed by others in the Legislature, have not found the support of the government with respect to the investigation of all civilian complaints from the day-one theme.

I think it is fair to say that it would appear, from the comments of the Solicitor General this morning, that it is not very likely that view will change. If that is the case, how do you see the bill, in its present form, accommodating the monitoring theme that city council then referred to as the third of its recommendations on May 7? Are you content that the monitoring situation and the practice that is set out in the bill will attempt to sort out those concerns at least?

Mayor Eggleton: We are not sure of that. Monitoring can mean different things. It could mean just receiving a report and reading it over. We think, however, that monitoring should go a step further and that the public complaints commissioner should be able to send somebody in, an investigator in, to work with the police. The police would have carriage if the bill goes in its present form, but he should be able to have somebody there monitoring the investigation being present on site physically monitoring it. That is what we are suggesting as an alternative.

As the bill reads now, there is some suggestion regarding exceptional circumstances. We are not quite clear what that means. But certainly we feel that the monitoring I have described should be occurring right from day one.

Hon. Mr. McMurtry: Perhaps I should have addressed that earlier. I had envisaged, Mayor Eggleton, and I think the commissioner and, I believe, the chief of police, that under the bill, in certain investigations obviously--bearing in mind that 90 per cent of these complaints are apparently resolved informally, and of the rest, there are a few that obviously fall into a highly sensitive, volatile category--we had envisaged that in many of those cases it probably would happen that there would be that type of monitoring. This will depend a lot on the discretion of the various people involved, and the spirit of co-operation. But that had been envisaged. I think it has been a useful suggestion and it is one of which we are quite supportive.

As to actually setting out the nature of the monitoring in legislation specifically, my own view is that it would be best left to the wisdom of the people involved in this process. But certainly my own view is that I can see certain cases where obviously it would be in the interest to have the monitoring as has been suggested. So I do not quarrel with that.

Mayor Eggleton: One of the difficulties is, in certain cases, trying to define what they are and whether it is the kind

of case he should be involved with at day one. It may not always be apparent right from day one.

Hon. Mr. McMurtry: That is right.

Mayor Eggleton: There may be a lot of them that can be informally dealt with.

Hon. Mr. McMurtry: Can I just follow up on what I said? Section 14 of the act does contemplate this. Section 14(1b) says the commissioner "shall monitor the handling of complaints by the bureau and the chief of police." That section has been deliberately framed in a fairly general way in order to allow a great deal of discretion, so far as the commissioner and the staff are concerned, as to the nature of the monitoring.

Mr. Breithaupt: But it does not make it an obligation to do so.

Hon. Mr. McMurtry: It does make an obligation, and he does have that obligation. So I think in this area it will work out the way we generally agree it should work out. Because he does have that obligation to monitor the handling of complaints.

Mayor Eggleton: What we are suggesting, again, is not just reading reports but actually getting involved there from day one. Maybe a lot of them can be dealt with informally, but I think they should have the opportunity to be there.

Hon. Mr. McMurtry: But the legislation does not say just reading reports. It uses the word "monitor," which, with all due respect, goes on much beyond that.

Mayor Eggleton: Perhaps that needs some definition. If you look at other parts of that same section talking about the commissioner getting involved in the process, there is the reference to the 30-day period and a reference to getting in at an earlier stage under exceptional circumstances. I realize that refers to taking over the investigation, in effect, but if you look at the bill in that context, it gives the impression that the PCC would stand back for the first 30 days except in exceptional circumstances.

10:50 a.m.

Hon. Mr. McMurtry: That is not what the bill says, Mayor Eggleton, with the greatest of respect. Section 14(1b) says the commissioner "shall monitor the handling of complaints by the bureau and the chief of police." It does not--

Mayor Eggleton: You are saying that could include he or his representative actually being on site with the police during all of the investigative process.

Hon. Mr. McMurtry: It could involve that. Yes.

Mayor Eggleton: That is his discretion.

Hon. Mr. McMurtry: Obviously it is going to be a matter of his discretion and given the nature of the complaint. As you said a moment ago, it may not appear appropriate in the first, second or third day, but maybe something will develop that it does appear appropriate. I think it does.

It is my reading of the bill that it gives the complaints commissioner a wide discretion, and it is the wise exercise of that discretion that is going to either lead to success or otherwise of this project, in my view. That is why we do have to depend, to such a large extent, on the quality of the individual involved. Because without that quality even an independent investigation from day one is not going to mean very much in any respect.

Of course, I see a lot of other problems, as I have already suggested. But we have built into the legislation a wide discretion for the commissioner, and I think the manner in which that is exercised is going to make this succeed, fail or somewhere in between.

Mr. Wrye: Mr. Chairman, could I just have something of a supplementary to the matter that Mr. Breithaupt has raised?

The second part of your third recommendation that the council approved also refers to the commissioner making the decision with respect to the disposition of the reports. I would presume this would reach to the next subsection of section 14; that is, as it now reads, "The public complaints commissioner... may review the record of the informal resolution of a complaint..."

Mayor Eggleton: Yes.

Mr. Wrye: I presume you would rather see that read "shall review."

Mayor Eggleton: Yes. Section 10 outlines also the disposition of reports on the part of the chief of police, and we are saying that it should be the public complaints commissioner who should do that.

Mr. Wrye: I am sorry; in section 10(1)? Is that what you are referring to, Mayor Eggleton?

Mayor Eggleton: Yes.

Mr. Breithaupt: Does the Solicitor General have a view as to whether that should be, again, the obligation rather than the opportunity?

Hon. Mr. McMurtry: There is some merit in that suggestion. Given the large number of informal resolutions that occur without much fanfare, there may be an administrative problem, but perhaps there is real merit in changing that from "may" to "shall."

Mr. Breithaupt: The first one.

Hon. Mr. McMurtry: I would like to think about that, but I think it is something we should consider very seriously.

Mr. Breithaupt: Perhaps, Mr. Chairman, in the summary he is going to provide with respect to the various presentations, the clerk could refer them to section 14(lb) and the comment with respect to the third recommendation of city council, and to section 14(lc) with respect to considering having the first word "may" changed to "shall." We will look forward to hearing from the Solicitor General when he has had a chance to consider it.

The Vice-Chairman: I have a list of members who would like to question the delegation: Messrs. Philip, Mitchell, Hennessey and Ms. Fish. Were you finished, Mr. Breithaupt?

Mr. Breithaupt: Yes. Thank you, Mr. Chairman.

Mr. Philip: Your worship, I wonder if you can tell me, in your dealings with the various "visible minority group leaders," is it your opinion that they speak in a knowledgeable way for the people who they are representing, and that they have a fairly good understanding of the positions that each or a majority of those people would take on this bill?

Mayor Eggleton: It is like that in most organizations, as I think was said earlier, that their membership is perhaps only a fraction of the total community. But, as I say, a good many of the people that appear before us are not of radical views. They are people who are very knowledgeable about the bill, about the whole process. They are very active in their communities, and I think do represent a fair number of people.

It is hard to quantify those kinds of things, but I certainly sensed the general direction of the people from the different visible minority communities was strongly in favour of the independent investigation from day one.

Mr. Philip: And that is your position also, Alderman Hope?

Alderman Hope: Yes, certainly.

Mr. Philip: Is it your view, in dealing with these "visible minority groups," that they are knowledgeable of the contents of the bill and that they do understand the procedures that are outlined in the bill?

Alderman Hope: Yes.

Mr. Philip: And therefore it is unfair to say that their views or their opposition is based on misinformation?

Mayor Eggleton: I think they are informed about it. In fact, they are quite concerned about it. Many of them are the same people who have been urging the government to take action with respect to this matter for a number of years.

Mr. Philip: In the long work of your committee and, indeed, of the development of the bill, would you say it is true

that it is not only the visible minority groups but also a lot of people in, how would you call it, the vast Anglo-Saxon Protestant or Catholic communities, who also have some concerns about the investigative parts of this bill? Or is it only the visible minorities?

Mayor Eggleton: No. We have people on the mayor's committee who are not from visible minorities, and they shared the same views in this respect. We had, of course, a presentation from the Canadian Civil Liberties Association, which has a far broader membership than just visible minorities. So I think it is broader than that.

Mr. Philip: Alderman Hope, in your constituency, if the average person feels aggrieved in some way by some actions of a police officer, do you feel that under the present system as set up in the bill that person would even approach having that grievance aired, or is there a percentage that would and would not? How many cases, in other words, would this system discourage from ever coming to light?

Alderman Hope: Let me put it to you this way, sir: In my constituency, which comprises perhaps 50 per cent of the minority groups, this is the percentage which I find often being timid about stepping forward, and they have to have an avenue in which they feel some confidence. Bill 68 provides some groundwork for that, and I think it is something which everyone would support in terms of the principle, make no mistake about that.

But there is not a week that goes by, sir, when I do not have a phone call or a visit from a person who feels aggrieved and finds that simply going down to the police station--in fact, as shown in this bill, this is the initial place where you would go if you had a complaint--does not wind up with a satisfactory solution.

Oftentimes, when he does visit that particular police station, it would wind up with perhaps hours of conversation and perhaps a kind of amelioration. But as to the injustice of the whole situation, it does not result in that at all; and that is why I think there are certain elements in this bill which still perpetuate that.

I am not saying we should not support the bill. I think we should push on with the bill; but at the same time I think we should provide for certain minor amendments so that a citizen, if he feels aggrieved sufficiently, does not feel that there should be a roadblock, as now exists.

I think in the main the citizens have utmost confidence in the police department. Make no mistake about that. But when it comes to minorities, certain minorities are not articulate enough, and they do not know the avenues, and therefore it is important for us to recognize that.

11 a.m.

If it appears that Bill 68 seems to be a kind of interlocking directorship between the police department, the

police commission, as well as the board in this new bill, then that alone provides a certain amount of intimidation for those who have doubts to begin with.

For instance, in my ward there is the Torcato case, let alone the Albert Johnson case; they are both in my ward. These are people who have a long kind of reflection as to what is going to happen in the future. Is the Emergency Task Force going to barge in and blast the house open, that kind of thing? Is it going to happen in the future, or does Bill 68 have sufficient devices in order to inhibit that sort of a situation from happening in terms of police action? That is just a simple example.

Hon. Mr. McMurtry: I wonder if I might interject in relation to something that you said. I think perhaps you may have touched on what I touched on earlier about misunderstanding when you said that some of your constituents, some of the people who live in your ward, would not want to go down to the police department to make a complaint. But, as we said earlier, the bill of course contemplates that and provides that the complaint need not be made at the police department but directly to the commissioner's office. That is addressed in the bill.

Mr. Philip: I believe Alderman Hope acknowledged that earlier in his answer to me but said the physical relocation, in fact, was not enough to overcome those anxieties.

Alderman Hope: That is right.

Mr. Philip: Is that not what you said?

Alderman Hope: Yes. I recognize, however, that this is a three-year kind of test and other things may evolve.

Mr. Philip: I wonder, Mayor Eggleton, if you can give us some insight. Yesterday I expressed concern about what I considered to be an affront to this committee in the appointment of a commissioner--and no one would disagree that it was an excellent appointment--prior to this committee of the Legislature dealing with the matter and of having representations from people like yourself and other groups. As I recall, the justification the Solicitor General gave was that Metro had asked for it and therefore he went ahead and appointed Mr. Linden in this case and the process was started.

You touched on it very briefly earlier in your statement, and I am wondering if you can give us your feeling as to what I would call a premature action on the part of the government in terms of the credibility of this commission at this point in time.

Mayor Eggleton: We, of course, are anxious that the public complaints procedure be established as quickly as possible. City council has said that and of course, as you have mentioned, Metro council has said that. If the appointment of Mr. Linden helps to facilitate that in terms of him setting up an office, getting the mechanics ready, then I see nothing wrong with that. Certainly I do not see that there can be much of an effective operation until this bill is in place, and until the difficulty of

when the independent investigation can occur or when he can become involved in the process and in what manner is resolved, and that is the main point of contention.

I think there are very limited things that he can do, but I certainly do not quarrel with either the person appointed or with his getting started on it. I think this question certainly has to be addressed very quickly; otherwise, he is not going to be able to do a very effective job until this bill is through.

Mr. Philip: Since Mr. Linden is quoted as saying that part of his role will be establishing the procedures, would you agree that the procedures are some of the very things that people like yourself may be concerned about and may be addressing the committee on?

Mayor Eggleton: Yes, absolutely.

Mr. Philip: Therefore, you would agree that there is very little that could be done unless, of course, they are forging ahead without (inaudible) to the committee.

Mayor Eggleton: Other than setting up an office and staff and whatever things can be done, it is very limited until this bill is passed and that particular question is finalized.

Mr. Philip: Then you would disagree with the statement attributed to Mr. McMurtry in the Globe and Mail article of July 24, in which he said complaints commissioners should be able to function successfully even without legislative powers.

Mayor Eggleton: Until that question of independent investigation or monitoring--whatever the process is going to be--is answered, as I have said earlier, I think there is a considerable restraint on his functioning.

Mr. Philip: Have you, in your experience as mayor, or previous municipal experience, ever known of other instances in which legislation which was required by the municipality of Metropolitan Toronto or by any other municipality was acted on before the legislative authority was given?

Mayor Eggleton: I can't think of any offhand, but each piece of legislation is quite different, and it is a very different circumstance here; but I can't recall an instance.

Mr. Philip: Thank you. No further questions.

Hon. Mr. McMurtry: Following that, Mayor Eggleton, I think you are aware that 90 per cent of these complaints are resolved informally now--

Mayor Eggleton: Yes, and I would hope they would continue to.

Hon. Mr. McMurtry: --and I think we all agree that the informal resolution is important.

Mayor Eggleton: But I think the public complaints commissioner should be part of that informal resolution right from the beginning.

Hon Mr. McMurtry: Yes. I agree that person could be very helpful. I just wanted to make it clear that, quite apart from the request of Metro council, to which we have already referred, I think it is fair to say that some of the apprehension in relation to the project was whether we were going to appoint a credible person.

I would suggest--and you can disagree with if me if you choose, of course--that the appointment of Mr. Linden was at least to address that issue, to demonstrate that we had intended to appoint a credible person, so that people would not simply be looking at the legislation in the abstract but at least would have the benefit of knowing who was going to have the responsibility. Do you quarrel with that approach?

Mayor Eggleton: No. I don't quarrel with that at all.

Mr. Philip: One last supplementary on that: Would you agree that, although Metro council would have been asking for this type of legislation, there was no specific request that you know of that asked the province of Ontario to proceed with the setting up of this body prior to the legislation having been dealt with appropriately in the parliament?

Mayor Eggleton: I don't recall any specific request. I think both Metro council and city council--city council expressed in a resolution in May that it wanted to have the procedure put in place as quickly as possible. I think Chairman Godfrey and perhaps many other members of Metro council wanted it put in place as quickly as possible, as well. I don't recall a specific resolution this past summer or past few months.

Mr. Philip: But "as quickly as possible" in no way anticipated going around the rights of a committee to deal with the legislation and to pass that legislation; in other words, the intent would be for the committee to deal with it as quickly as possible.

Mayor Eggleton: Council did not address that question one way or the other.

Mr. Williams: One supplementary just to put the cap on this: Mr. Mayor, as I understand it, in your judgement the appointment of Mr. Linden and the setting up of the machinery as far as it could be done without the legislative framework has not proved to be an affront to anyone, other than perhaps Mr. Philip, or has not in any way prejudiced the process that we are going through now. Is that your conclusion in the matter?

Mayor Eggleton: I don't think so. But, as I say, it is very limited as to its purpose until this question of the legislation is settled and at what point he is going to be able to get involved in things.

Mr. Williams: I presume the side benefits would be that it is putting the machinery in place much sooner if the bill is enacted, in whatever form, by taking these preliminary steps now.

Mayor Eggleton: It could be helpful, but only to that extent.

Mr. Williams: Thank you.

11:10 a.m.

Mr. Mitchell: Your worship, I would like to follow up on one comment you made which was not in your written presentation. I would be paraphrasing, I suppose, but, if I understood you correctly, I believe it was implied in you said that the internal discipline committee can be very hard on police officers and so on who are not carrying out their duties in a proper fashion. Would you care to reiterate that particular statement you made?

Mayor Eggleton: I think there is a perception that that could be the case. It is a difficult bind that the police are in when they are investigating themselves. They would certainly want to be sure that there was every public confidence in that investigation and that everything was thoroughly investigated; and there may be a tendency to go a little bit harder so as to demonstrate to the public the fact that there is a very thorough investigation and that a very fair conclusion is being reached.

Then, of course, there is the other view that some people have expressed to us, particularly minority groups, that they are afraid there would be a coverup of matters in the protection of their own officers.

I think the police are in a no-win situation in that, and I would think they would welcome an independent investigation.

Mr. Mitchell: None the less, I presume your view is that the police departments are going out of their way to ensure that everything done on a disciplinary basis is done in every way, shape and form possible to the best it can be done.

Mayor Eggleton: I believe that is the case but, as I say, we are dealing not only with the question of justice being done but also with the perception of justice and the perception that everything is being dealt with thoroughly. That is why I think an independent investigation to bring about the widest possible public confidence is important.

Mr. Mitchell: Following up on what Mr. Philip and Mr. Williams said, would it be fair to say--Mr. Philip seems to think that this committee has been affronted by the appointment of Mr. Linden; I am not one who shares that view--

Mr. Philip: On a point of order, Mr. Chairman: I never said it was the appointment of Mr. Linden that affronted this committee; I am quite supportive of that particular appointment. What I said was an affront to this committee was the setting up of

processes before this committee had an opportunity to deal with those processes.

Mr. Mitchell: I will accept your correction, Mr. Philip.

This is a very important bill as far as Metro Toronto and the city of Toronto are concerned. Surely it would be in their best interests, because Mr. McMurtry's statement, for example, says he will be establishing his office pending passing of the legislative framework within which he will work.

Surely, if this office were not in the process of being set up now, what could be faced on passage of this bill--and there may be amendments to the bill which will satisfy most areas of the community--would be a further delay of something which you feel is of the utmost importance and that it be established immediately, so to speak, on passage of the bill.

Would you say that, at least by getting this process done, we are working towards solving what could be a major problem after the passing of the legislation?

Mayor Eggleton: That is fine as far as it goes, as I have said. Putting him in place gets the office set up; there is an individual we can talk about and understand. It's not just the title of public complaints commissioner; we now know it is Mr. Linden. That is fine, but he cannot be too effective until he can get into operation--

Mr. Mitchell: I grant you that.

Mayor Eggleton: --until the bill is passed and until this question of when he is allowed to send his investigators in is dealt with. Those are very critical. We have gone as far as we can go. That is fine; I do not disagree with that. But now is the crunch, now is the important issue that has to be addressed.

Mr. Mitchell: I am not disputing that. I am just saying that, on the basis of its importance, the minute this bill is passed, with whatever amendments are done which hopefully will solve the majority of the concerns, the setting up of the office and ensuring that investigators and so on are able to be brought on stream will then enable him to go to work immediately rather than facing the delay that otherwise would have been created.

Mr. Hennessy: Your worship, I would like to ask a few questions. I am not that familiar with the operations of your council and how you operate. Does the police department come under the jurisdiction of the Metro council?

Mayor Eggleton: It comes under the jurisdiction of an independent police commission of five members; three are appointed by the provincial government--or the Lieutenant Governor in Council, I suppose--and two are appointed by Metro council and in fact are members of Metro council.

Mr. Hennessy: And their salaries are paid by the taxpayers of the city of Toronto?

Mayor Eggleton: The policing operations are paid for by the municipality, with grants from the provincial government.

Mr. Hennessy: But they are budgeted by you?

Mayor Eggleton: Yes.

Mr. Hennessy: And they are classed as civic employees?

Mayor Eggleton: Are you talking about the commissioners?

Mr. Hennessy: Are the policemen civic employees or provincial employees or federal employees? My limited knowledge of the police department is that if the council budgets for it and tax the people of Metro Toronto, it is the council that is accepting that tax. So they get pensions and all that--

Mayor Eggleton: Oh, yes. We are responsible for all the (inaudible)

Mr. Hennessy: So they are civic employees?

Mayor Eggleton: I suppose in that context, yes.

Mr. Hennessy: Now, if one of your civic employees in your vast--

Mayor Eggleton: Metro being civic in this case.

Mr. Hennessy: If one of your civic employees commits an infraction--and there are a lot of civic employees who do get into problems, whether they work in the boiler works or whatever they work at--how is that handled? Let us say there is a complaint against one of your foremen on the road, or one of your garbagemen, or one of your people who inspect houses; if there is a serious complaint, how is that handled?

Mayor Eggleton: It would be handled in the initial instance by supervisors and on up the line in the management of the department. If some disciplinary action is taken by the supervisor or the department head, whoever has that jurisdiction, the union could then grieve the matter if it felt the employee was not being properly dealt with, and it could be dealt with through an arbitration process.

Mr. Hennessy: But there has never been any thought of getting independent people to sit on that board. After all, they are in the same position as the police department, who are civic employees. Are you not discriminating against one segment of your civic employees?

Mayor Eggleton: No. Because if the employee does appeal through his agent, the union, then there could be a grievance hearing, which would be an independent body.

Mr. Hennessy: It seems odd to me, sir, that a policeman is recognized as an employee of Metro, and the fellow who pushes a wheelbarrow or drives a truck also is recognized as a civic

employee, but you have two different standards for your Metro Toronto employees. One has to have civilians sitting on a board, which they are demanding--I am not arguing the point; I am just looking at the opposite side of the picture and asking if there is discrimination.

If somebody working on the boiler works, or whatever it is, commits an infraction that may be much more serious, he is only investigated by his union people or by the people in city hall. There is no representation of the general public sitting on that board. But you want representation sitting on the board--

Mayor Eggleton: But there is provision for an independent tribunal (inaudible)

Mr. Hennessy: But there is no great demand, like there is on this one. If I were a policeman's wife, I would say, "Gee, they are discriminating against my husband to some extent," because you are getting paid by the same people but there are different rules for one department and different rules for the other department. What guidelines have you got?

Mayor Eggleton: I don't agree with that. There is a provision for an independent tribunal to hear a grievance. There is opportunity for the employee--

Mr. Hennessy: Independent of what? You just said the union would look at that case.

Mayor Eggleton: I am saying the disciplinary action, if imposed by management, could be appealed by the employee or his representatives.

Mr. Hennessy: But you have people sitting on the union. They don't want to have the police investigating the police; that is not good enough. But if a fellow makes an infraction in the boiler works, his own people are good enough to sit on this board. There is no big demand for you, as the mayor, to make it across the board and say that all civic employees or all Metro employees will come under the same jurisdictions if there is a complaint. Why shouldn't a taxpayer receive the same consideration all the way down the line from your office?

Mayor Eggleton: I think there are proper processes in place--

Mr. Hennessy: You just said there wasn't, sir. You said the unions investigate. And I know that is a fact, that unions do investigate; I have a little knowledge of civic politics.

Mayor Eggleton: They are there representing the interests of the employees.

11:20 a.m.

Mr. Hennessy: But nobody has asked for special people to be put on this tribunal; that is what I am saying. There seems to be a differential because it is the police department--

Mr. Philip: (inaudible) by giving the Ombudsman power over municipalities for investigation purposes.

Mayor Eggleton: I just do not agree with you. I just do not understand why it is different. Sure, there are different processes that we are talking about here, but I think there is a proper process to deal with the kind of concerns you have talked about with respect to our employees. Those are processes that have been developed in labour law over a great number of years.

Mr. Hennessy: I am not arguing. All I am doing is asking the question, how can people working for the same Metro government be treated differently? That is all I am saying.

Ms. Acheson: May I speak to that? I just want to say that I think there are different processes taking place here for a very real reason. There is a very real difference between a person who is a member of the police and a person who is a normal civic employee who deals with the garbage or who works on the streets.

The police have very distinct powers over the populace of the city, and they are given those powers by legislation. They have the right to do certain things. But, because of those powers, there is a special responsibility that goes with that. As a result, any person who has been victimized by the police has certain rights to have a special kind of tribunal, which is independent, to have those complaints investigated.

I think you would agree with me that there is a very real difference between a policeman, who can stop you, who can come into your home, who can carry weapons, and all those sorts of things, and any other civic employee.

Mr. Hennessy: But they are still civic employees. You still get paid by the same people, and the same taxpayer is paying. All I am saying is, if you run a municipality, you try to treat everybody equally, and especially the employees of a corporation.

I am just saying there is a great gap in regard to this. If they were employees of the province, I could see the argument; but they are employees of Metro Toronto and are not receiving the same way of being heard as the person who takes care of the problems throughout the city. I am just saying there are people in the city whose duties are just as important as a policeman's.

If somebody were to steal X thousands of dollars from the city of Toronto, there would not be a public hearing on it, or a tribunal, or people from the taxpayers saying: "He stole my money. I want to sit in on what kind of decision you make." Sometimes it is done. The committee meets and the public is dismissed and that is the last you hear of it. But if it is a police officer--

Mr. Elston: Mr. Chairman, I wonder if I might say a couple of words. It is a basic premise of--

Mr. Chairman: I'm sorry, Mr. Elston. Mr. Hennessey has the floor, unless you have a point of order.

Mr. Elston: We are here to deal with this particular legislation because there has been a public awareness that there is a need for it. What he is saying is that we should not be here at all. If that is his position, then I do not think he should go ahead on that.

Mr. Chairman: You are out of order, Mr. Elston. Mr. Hennessy, carry on with your discussion.

Mr. Hennessy: The mayor has said they are civic employees. And if you were any kind of a member of parliament, you would be against discrimination to some extent--

Mr. Elston: I appreciate Mr. Hennessy's concern but, with all due respect to Mr. Hennessy, I think he is moving us away from the issues we are trying to deal with here. Perhaps he should get back to the real issues in front of us, and that is (inaudible)

Mr. Chairman: Are you speaking on a point of order, Mr. Elston?

Mr. Elston: I just would like to--

Mr. Philip: That is what it was, Mr. Chairman: a point of order.

Interjection: I's a point of view.

Mayor Eggleton: Let me answer further by saying you must remember that, unlike other civic employees who may be just carrying out the policy or enforcing bylaws, the police are also enforcing the Criminal Code of Canada and provincial statutes.

Mr. Hennessy: It is the same with the fellow who sweeps the streets and the other guy who does something else. They are all important in the operation of a city. What I am saying is, if they are recognized as civic employees, there should be the same guidelines by Metro Toronto for everybody.

Mr. Philip: But there is a limit as to how much your garbage can be beat up, Mickey.

Mr. Hennessy: I'm surprised they never picked you up.

Mr. Philip: That's because of my close association with the Ontario Trucking Association.

Mr. Chairman: Miss Fish.

Ms. Fish: Thank you, Mr. Chairman. I have just a couple of questions.

I thought I heard Alderman Hope using some very strong language, with phrases like "concerns about interlocking directorate" between the proposed civilian complaints commissioner's operation and the police. I inferred from those remarks that a position was being advanced that suggested the

investigation into complaints should be completely independent with no relation whatsoever to the police.

Mr. Mayor, I would ask you whether that is your understanding of the position of council.

Mayor Eggleton: The council has said there needs to be independent investigation from day one. It has not said the Metro police department should not also be involved with the investigation, because they need to do that for their own internal discipline matters at least. But the carriage of the investigation, it is being suggested, should be independent under the direction of the public complaints commissioner.

Ms. Fish: Just so that I am clear on the point, then it is neither your position nor your understanding of council's position that there should be no involvement by the police in the investigation.

Mayor Eggleton: That is correct.

Ms. Fish: That is correct.

Following on from that, I thought I understood some of the opening presentation to be suggesting that the essential concern for the proposed independent investigation was a concern bred of perception. Certainly that seemed to be reinforced in my mind in answer to some questions that you provided to Mr. Mitchell. I wonder if you could just tell me whether I have correctly understood that.

Mayor Eggleton: It ensures justice and fairness. It also gives that perception that would give the widest possible public confidence in the process if there was the independent investigation, or at least a very on-site, physical presence in monitoring right from day one.

Ms. Fish: Going back to your words about ensuring justice and fairness, do I reasonably infer from that that it is your view that an investigation being undertaken by police officers would therefore be neither just nor fair?

Mayor Eggleton: No. I did not say that. I said the perception in the confidence in the process where it would only involve the Metropolitan police force itself in the investigation is, I think, lacking. The people who have been most concerned about having this bill and this procedure put into place feel that there has to be independent investigation from day one. So there is that difficulty with the perception of justice being done.

Ms. Fish: You would say that is a perception held by city council?

Mayor Eggleton: Yes. City council has said there should be the independent investigation.

Ms. Fish: Because of that same perception held by city council respecting fairness and justice and completeness?

Mayor Eggleton: Yes. City council wants to have the widest public confidence in this process. It does not want a bill put into place which people are then going to say is ineffective, does not work, does not meet the needs, the concerns that many people have. What is the point of doing that?

We are saying that, to have that widest public confidence, having heard from many people in regard to the matter, having drawn in many people who are very knowledgeable about it and having heard from the various organizations and individuals who are concerned about it at the mayor's committee, we feel there should be independent investigation from day one.

Ms. Fish: What I am after, however, is whether council is simply relaying its sense of what other people are saying, or has council also taken a judgement on the matter?

I ask you that because a year ago, when I was on council, and at times prior to that, it was common for council not really to hear people and relay a concern but to debate a matter fully and to take a position that provides some information about council's belief.

I wonder if I could repeat my question. Does council share the perception? Is council convinced that the most just, the most complete and the fairest investigation of complaints can only be achieved through an independent investigation?

11:30 a.m.

Mayor Eggleton: Council speaks through its resolutions and it has agreed--as I recall, this was unanimous and not contentious--with the position that came from the mayor's committee.

Ms. Fish: Right. May 7, 1981, in the seven pages of material we got.

I am curious then as to whether in your view there has been a significant change in your belief in particular and perhaps in the belief of council respecting confidence and the abilities to be fair, complete and just in police action and particularly investigation of police conduct by at least the rank and file of the police department, who presumably are the ones who would be involved in investigations.

Mayor Eggleton: Certainly for my part, I have the highest confidence in our Metropolitan police force and the officers. There has been nothing said by council, and I don't believe council as a body would have any different view from that.

We are, again, concerned with having the widest public confidence in this process. We want it to succeed; we think it is important. We feel in order for that to happen requires an independent investigation. That is not in any way to be taken as any lack of confidence whatsoever in the police department.

Ms. Fish: In your view, then, the motions adopted by

council approximately two years ago, in a very lengthy and complete debate following many deputations at the committee level, Mr. Mayor, in which you were intimately involved in framing the motions that specifically expressed full confidence in the rank and file of the police force, the subject of a debate dealing with police conduct, has not altered, either in your personal opinion or in the judgement of council?

Mayor Eggleton: I don't recall which specific resolutions you are referring to--there were quite a number of resolutions dealt with at council--but no, I think the position council puts forward now is quite consistent with those.

Ms. Fish: A question then on the matter that has been referenced about the three-year period with an opportunity to see matters evolve.

I have heard a couple of your fellow delegates making reference to the notion that the bill is going in the right direction, to an understanding that it is a considerable departure even of itself from what is there now and to the fact that the proposal is for a three-year operating period that would enable some experience to develop.

I am curious as to why it is that you feel that the opportunities provided through the several sections that were so finely highlighted by the Solicitor General in some of the exchanges that provide for monitoring, for an opportunity for the civilian complaints commissioner to intrude upon the investigations quite early, are not something that would make some sense to do and to monitor the effect and experience over the three years to assess what changes, if any, should be made.

Mayor Eggleton: With respect to the three years, I think we are really talking about something that is going to be put in place permanently. I cannot imagine that we would terminate this process in three years' time. Maybe that is a device for review, but I would think review would happen in any event. I certainly would not support putting it in process and then removing it after that period of time; so I am sure of the particular usefulness of that provision of three years.

The earlier bill drafts that dealt with this matter were along the lines that there really would be no independent involvement prior to 30 days. That appears to be changing, and if we can just make it clear that the monitoring can be done right from the beginning, that the public complaints commissioner is not hampered by phrases that say he could only go in in exceptional circumstances and then he has to determine what they are, if he can get in and be present, or have his investigators present, even in just a monitoring fashion, right from day one in every case or as many cases as he certainly wants, then I think that's a substantial improvement over what we understood the intent of the earlier draft bills to be.

Notwithstanding that, it's the view of the city council, the mayor's committee and me that an independent investigation process is preferable, but council has suggested that alternative if the

government will not go the position of an independent investigation from day one.

Ms. Fish: My final question is a question of information. Can you tell me, Mr. Mayor, whether you or any of your fellow delegates at the table are members of the committee for an independent review of police action?

Mayor Eggleton: Certainly not me.

Dr. Hill: No, I am not.

Ms. Fish: Alderman Hope?

Alderman Hope: I assist, but I am not a member.

Ms. Fish: Pardon?

Alderman Hope: I said I assist, but I am not a member.

Ms. Fish: You assist the work of the committee, but you are not a member.

Alderman Hope: That's right.

Mr. Philip: You do assist some of the groups that are involved in that particular committee, do you not?

Alderman Hope: We have co-operation in some instances. I feel that the avenue should be left open, certainly.

Mr. Philip: Is the South Asian Origins liaison committee one of the groups that you have regular dealings with?

Alderman Hope: I don't. Very little.

Ms. Fish: I have no further questions, Mr. Chairman.

Mr. Wrye: Mr. Chairman, I just wanted to start out with an observation I seem to be hearing. I have always felt it not to be so and all of you in your presentation this morning seem to be saying that this is not a case, as some people have suggested, of the good guys versus the bad guys--that if you are in favour of the police conducting the investigation you are a good guy, or in favour of the civilian you are a good guy--that we are honestly differing on an approach that you in general feel that this legislation as opposed to none at all has certainly got to be an improvement over what we have been experiencing in Metro Toronto in the last few years.

Is that so, Mr. Mayor?

Mayor Eggleton: Yes. Except, as Dr. Hill indicated earlier, if the various organizations and representatives of visible minority groups do not have confidence in the process, if they feel there has to be independent investigation and that's not part of the bill, then I think it considerably hampers the effectiveness of it.

Mr. Wrye: I certainly share that view, and I would just like to start out by stating that we have emerging on the one side the view that states, as Dr. Hill suggested, that he has not heard, from any group which represents any of the visible minorities, any support for the bill.

I believe in your opening statement, or in Alderman Hope's comments, the concern was expressed that many of the people who would most gain from this bill may still never complain. That's on the one hand, and that is the side that says we ought to have the independent investigation.

On the other hand, the Solicitor General repeated again this morning to you the views of Chief Ackroyd that an independent investigation would significantly undermine discipline. Also there were his statements yesterday, quoting from one of the reports which he uses, that there are certain stubborn realities among the police force which really preclude an independent investigation. We seem to have these two divergent opinions.

You still favour the independent investigation, and I would like you to share with the committee your views as to how we can make this work. If we were to have an independent investigation, how can we bring the police on side, on board?

11:40 a.m.

Mayor Eggleton: You obviously can't exclude them from the investigation. I think it's a question of who has carriage of the investigation, and I think it should be the public complaints commissioner; he should be investigating. I see no difficulty at all in the police being a very key part of that investigation. Indeed, for their own internal discipline matters they would have to be.

I have the highest regard and respect for the police chief. If he is saying his interpretation is that they would not be involved in the investigation, then he would be quite right; but I don't see why they can't be involved in the investigation while the public complaints commissioner has carriage of the matter.

Mr. Wrye: I noticed Mr. Mitchell in his comments referred to a comment you had made about the police perhaps being too hard, and I suppose this is another instance where an independent investigation might be better in that the police may end up being too hard on some of their own colleagues in a really desperate effort to prove that justice is being done.

Mayor Eggleton: The fairness and justice goes both ways.

Mr. Wrye: The Solicitor General, in his comments yesterday and again this morning, referred to the fact that you don't really have to go the police in the first instance; you can go to the public complaints commissioner.

Perhaps this ought to be asked of Dr. Hill. I have some concerns that we are going to end up setting up parallel investigative forces, that we are going to have mass confusion

ultimately out of all of this. Do you share the view that some of the minorities who won't go to the police may end up going to the public complaints commissioner and really confusing the whole process?

Dr. Hill: I would like to hear from Mr. Hilton clarifying the legislation on that point first.

Mr. Hilton: Thank you, Dr. Hill. The legislation provides that wherever the individual goes, whether it is to the police, to the police complaints bureau or to the PCC, there is an obligation on those who receive the complaint to bring that complaint to the knowledge and advice of all those; that is the way the process starts.

Mr. Wrye: If I could clarify this a little further, though, there was a specific suggestion by the Solicitor General yesterday that if a certain complainant did not wish to deal with the police, he or she could go to the PCC and give a full and complete statement and presumably say, "I wish to have all of my dealings as this matter proceeds done through you rather than through the police."

Mr. Hilton: That is possible, but it isn't a duplication of investigation. He then works with the police as an intermediary for that person who doesn't want that contact with the police per se.

Mr. Wrye: Okay. I'll go back now to Dr. Hill.

We have, according to you, all of these visible minorities who do not support the bill as it now stands. Can you see these groups going to the PCC? Will they live with the bill and go to the police? Or, given a third choice, will they simply do nothing?

Dr. Hill: I can't answer that question, but I think there is going to have to be a lot of clarification regarding the bill publicly in order for that question to be answered satisfactorily by the minority communities. I can't speak for the minority communities' reaction to that, but I do think there is a lot of clarification needed on procedures and who goes where.

Right now it's the common feeling of the minority communities that the principal investigation will be done by the police. That idea hasn't been thrown out yet. I think that's the idea that the minority communities have, that the initial investigation is going to be done by the police. If there is some change in that, some clarification needed, it should come forth.

Mr. Wrye: That they will have to deal with the police?

Dr. Hill: They will have to deal with the police at the first level.

Mr. Wrye: Alderman Hope, you represent a ward that has a lot of what have been referred to as visible minorities. What is your feeling as to what people with complaints would do? Will they take the bill and find their way to police stations, will they go

to the office of the commissioner or will they simply do nothing?

Alderman Hope: I feel the bill does open up avenues for people to complain rather than to inhibit their own complaints; that's true, and it's a good step. For that reason I don't think there is anyone within the group of minorities, certainly the ones that I have discussed, who would like to subvert the bill.

On the other hand, I think they are very interested in certain amendments so that there would appear to be justice in the process of the bill itself in terms of the procedure.

I made mention of the fact that often in the past the last place where a complainant would wish to go to complain about a police officer is the police station. That is almost like walking into the lion's den as far as they are concerned. In fact, in some cases there have been some very serious instances of perhaps perpetrating of a further injustice in the minds of those who have brought their complaints to the police station, to the police sergeant or the constable at the desk. As a result, they have resorted to calling their alderman, for example, and laying the complaint at the door of the alderman.

I think Bill 68 perhaps helps in the process of what an alderman might do in holding the hand of the complainant to bring him to some other body. I think that is very important in terms of the bill itself. But in terms of perhaps those who are less articulate, and I made mention of this before, the ones who are less articulate, I am not so sure, unless this bill is widely advertised within the minority community, that it would have much more chance of success unless it does that. That is why the amendments are so important.

Mr. Wrye: One other question to you, Alderman Hope. It seems to me in some comments you made earlier you referred to the fact that five of the members of the complaints board will be nominees of the association and the board of police commissioners. I gathered from those comments that you have some concerns that again it is a case of justice not being seen to be done.

Alderman Hope: I am saying it in the context of what Mr. McMurtry had mentioned, in that in the earlier cases we are talking about, the Morand commission, Maloney and Pitman, where already you have a process which is sort of like a preliminary process where the police investigate themselves. That is where I think the weakness comes in, and this is what council says, because within the board itself you already have one third of the board made up of appointees from the same commission. That is what I am talking about.

Mr. Wrye: It would be your view, and perhaps the view of the city, of all of you, that where we get into an inquiry as it stands now, as you know, where we have a three-man panel, one of the nominees on the panel under 18(4) is a nominee jointly of the police association and police commission, and it would be your view that that would unfairly weight the three-member panel?

Alderman Hope: I am saying you have both. In the

beginning you have not an independent inquiry, but if you have a police inquiry of a police officer and then on top of that you have a composition made up of this, then it would be loaded dice as it were.

Mr. Wrye: So if this committee in its wisdom, when it votes, votes to maintain the role as it now is in having the initial investigation done by the police, it would be your view that the committee at this point ought to look at making whatever amendments it can--

Alderman Hope: Further amendments.

Mr. Wrye: --having allowed the police the initial investigation, to make sure that every other aspect of it be as independent as possible?

Alderman Hope: Yes, I would support that. That is my view. In other words, it would appear that they might have two innings.

Mr. Philip: Which route would you prefer: the removal of the police representative on that group or the addition of someone representing the complainant's side of things, such as a representative of the civil liberties association?

Alderman Hope: I made no mention of the addition. I am simply supporting the point that the initial inquiry should be an independent one. I think that is really the route.

Mr. Philip: I am in agreement with you on that. Supposing we don't get that, though; then the next stage comes as to what it is we deal with at the next stage.

Alderman Hope: What you are saying is that perhaps there should be a fourth complement. That is what you are suggesting.

Mr. Philip: You either remove one, which weights it on one side, or you add one, which will balance it out on the other. I am asking, which would you prefer?

11:50 a.m.

Alderman Hope: I think it is meritorious to consider a balance; in other words, a possible fourth complement.

Mr. Philip: Thank you.

Mr. Chairman: There are three speakers remaining, the last two of whom have promised to stick to two minutes each. But Mr. Elston is before those two. He doesn't qualify.

Mr. Elston: Mr. Chairman, I don't promise that. But in many cases some of my questions have been answered, and I will try to be brief.

There are a couple of areas that I just sort of want to fine tune. Basically, the recommendations of the mayor's committee and

of city council has been that the standard of proof be reduced. In other words, you are advocating balance of probabilities. Is that the case?

Mayor Eggleton: Yes.

Mr. Elston: Are you at the same time advocating any safeguards--it mentions as well, in item three, notification--are you advocating any other safeguards in respect of the officer who was involved in the process? Yesterday we heard from the association who thought that counsel should be provided and funding for the officer might be particularly appropriate. Had you or your committee considered any other safeguards for the officer?

Mayor Eggleton: We didn't get into that question in depth. We did in the case of the second and third recommendations that the committee made, endorsing the position that was put forward by the Civil Liberties Association. We felt that was a reasonable position. Details of those positions, of course, were in their brief and we essentially endorsed them.

Mr. Elston: You heard in April from both the police association and from a representative of the police force, I guess if you want to term it that way. Is that correct?

Mayor Eggleton: Yes.

Mr. Elston: Did you perceive there was a difference or a divergence between the stance of those two particular bodies as to their approach to the legislation? Did you find that the association might feel comfortable with independent review as compared to the management, or vice versa?

Mayor Eggleton: I think they were both saying the same thing in that connection. The association, of course, was speaking more to the question of protection of the rights of police officers, which is naturally something you expect them to do.

Mr. Elston: So they were rather ambivalent as to whether there was an independent investigation from the start?

Mayor Eggleton: My recollection is that they are supporting the chief's view. You will have to measure to what degree you think that support is.

Mr. Elston: I am interested as well in the current procedure for the complainant. Right now, as I understand it, the complainant does go to the police building--by himself in most cases, if not in all cases--and is then interviewed.

Would any of you advocate that the complainant should or could be accompanied by an agent of some sort to assist him, to make him feel more comfortable? Or would that make him feel more comfortable in the investigation process? Have any of you any reactions on that?

Mayor Eggleton: I would see nothing wrong with that. I

don't think that is the total answer to the dilemma we are discussing here, but certainly that is helpful.

Mr. Elston: Within the overview of what we have heard, though, it would be unlikely that we will change from the current police initial investigation, in the opinion of the Solicitor General.

Mayor Eggleton: That is why our council came up with the alternative.

Mr. Elston: What I am actually talking about are the procedures to make it more satisfactory to the complainant. In other words, what is going to make him feel comfortable?

Mayor Eggleton: Council did not address itself to that. I am here representing the position of city council, and a lot of those questions are questions that I can answer only on a personal basis as opposed to speaking for the council, because council did not get into that. What we are saying is, if there is not going to be the independent investigation from day one, then at least there has to be that very considerable presence at all times.

On the question of whether somebody can bring somebody with them, counsel or an agent or whatever, I would think that makes sense.

Mr. Elston: Have either Dr. Hill or Alderman Hope any indication from their contacts that isolation is a cause of rejection of the system as it currently is?

Alderman Hope: I would agree with that. At the moment there is nothing that could prevent legal counsel from accompanying the complainant if he were to go to the police station. But then it becomes a matter of hearsay between one party and the other. What I am simply saying is that is sort of a loaded forum and that part has still not been addressed in this until such time as we put it to the test.

Mr. Elston: The difficulty now, as I understand it, is that it is a one-on-one feeling of controntation.

Alderman Hope: That is right. It may very well result in further confrontation rather than a resolution.

Mr. Elston: What you hope to be doing by your recommendations is eliminating the confrontation altogether in the process; is that correct?

Alderman Hope: Yes.

Mr. Elston: Dr. Hill, do you have any comments on that?

Dr. Hill: I cannot add to what Mr. Hope has said. I wonder whether there is any way an individual can go to some place other than the police department. That is something you may want to consider: if there is a way of going to lodge a complaint in some other facility other than a police department.

Mr. Elston: The bill, as has been indicated, means that in fact you can go to the public complaints commissioner's office.

Mr. Hilton: If I may just comment on that, Dr. Hill may not know that already space has been rented in what was the old home economics building, where the Ombudsman is, at the corner of Bloor and Avenue Road. An office is being set up there.

Mr. Elston: The difficulty still is, I think, that even though the initiation of the complaint can be done separately from interaction at the police facility, the investigation is still done by the police. It is that part that concerns the individuals in this group, as I understand it. Is that correct?

Mayor Eggleton: It is not that they should not be involved; it is a question of who has carriage of the investigation.

Mr. Elston: Sections 14(3) and (4) deal with the case where the public complaints commissioner decides he wants to get into an investigation at an early stage. If the provisions of this bill are carried as they now are, would you support the elimination of section 14(4), which gives the right of someone to take the PCC to court to review his decision to enter the process early? In other words, I think it is under section 14(4) that they can ask for court approval of the PCC's decision to go in early.

Mayor Eggleton: What I am looking at says, "A decision to take action under clause (c) of subsection 3 shall be deemed to be made in the exercise of a statutory power within the meaning of the Judicial Review Procedure Act, 1971."

Mr. Hilton: I'm sorry; we can't hear. There is a conversation going on.

Mayor Eggleton: I am sorry; I am not sure the grounds in 14(4) --

Mr. Elston: It gives the people a right to have the decision of the PCC appealed; in other words, taken under the statutory powers for judicial review of his decision. If he decides to go in early, this says someone can ask the court to okay it, in other words.

Would you be happy, if the current régime of the act is in place, that this be taken out to provide him with more discretion and better discretion?

Mayor Eggleton: The council position was that there should be an independent investigation and, in the alternative, that there should be the monitoring. I think we would want the maximum amount of involvement, on that basis, of the PCC right from day one. The less restraint there is on his being involved in monitoring, the better. I can only answer it in that general context.

Mr. Elston: I don't think I have any more questions.

12 noon

Mr. Philip: Mr. Mayor, the Solicitor General has indicated earlier that when the chief of police arrives, he will be making the point that if we were to go along with your recommendations, it will have a demoralizing effect on the police and affect discipline. "Morale" and "discipline," I think, were the two words that the Solicitor General used.

I wonder if you can comment on the effects, in your opinion, of the citizens' group which has just been formed under Mr. Wainberg? Do you feel a group such as that, notwithstanding the fact that there are many very responsible groups under that umbrella, may affect the discipline and morale of the police?

Mayor Eggleton: What group are you speaking of?

Mr. Philip: The citizens' forum group to investigate the police, set up by Mr. Wainberg. It consists of groups, some of which I have had interaction with and respect, such as the Union of Injured Workers and Metro Tenants' Legal Services.

Mayor Eggleton: I don't have too much knowledge of what that organization really intends to do. I don't think that is the answer. I think the answer is to have a bill where there is the widest public confidence in the process that is being followed to ensure that justice is done in these cases of complaints being registered. I think this is the process that needs to be concentrated on and not independent citizen action.

Mr. Philip: Notwithstanding your belief that this is not the answer, assuming that in a democratic society such a group can exist, would you agree that the existence of such a group and the operations of such a group may have a negative effect on the morale and discipline of the police?

Mayor Eggleton: I don't know. That remains to be seen. I don't see how that group can be effective if its intention is to do something along the lines of investigation. I just don't see how that is going to be effective.

Mr. Philip: Would you agree that there has been some comment, at least, by some people whom we can take seriously--I assume that is not some of the extreme statements by Philip Givens, but some other responsible people--that this type of group will have a negative morale effect on the police?

Mayor Eggleton: I don't know; I really don't know. I am saying I don't think that is the way to deal with citizen complaints.

Mr. Philip: I recognize that. You made that point earlier. Would you agree that such a group would not have any reason for existence, were your recommendations put into place?

Mayor Eggleton: I definitely feel that way, yes.

Mr. Philip: I just quote Mr. Wainberg in his

justification: "Citizens will be discouraged from using the police complaints bureau, because it involves police officers investigating other police officers." That is basically what you are saying, and that is his justification for setting up this group.

Mayor Eggleton: Yes. As I said, this is the direction to go. I am not suggesting, if this bill in its final form does not incorporate all of the suggestions that city council makes, that particular citizens' group should be the alternative. I don't believe that would be effective at all. It is definitely not the way this should be done.

Mr. Philip: Mr. Chairman, I think you will see what I am getting at: the accusation that accepting the mayor's suggestions would lead to the demoralization of the police. In fact, the opposite may be true. If the mayor's suggestions are not approved, it gives justification for other groups outside the process, and the existence of those other groups may have a morale effect on the police. I think I have made my case. If the mayor wishes, he may want to comment on that further.

Mayor Eggleton: That is not the case I was making. I have no further comments.

Mr. Williams: Mr. Mayor, perhaps you could be of assistance to the committee on a point raised by Ms. Fish earlier. She made reference to an organization--one of their spokesmen will be before us tomorrow morning--and because of a previous association, I want to be--

Mayor Eggleton: Who is this you are referring to?

Mr. Williams: I am referring to this Citizens' Independent Review of Police Activities; CIRPA, it is called. I just want clarification. It might assist us before we enter into these discussions tomorrow. Allan Sparrow, chairman, procedure committee--is this the same Allan Sparrow who is a former member of the city of Toronto council?

Mayor Eggleton: It sure sounds like it

Mr. Williams: Ms. Fish asked if you or any of your delegation were involved with that organization, and I gather the answer was no, although Mr. Hope indicated that he was in an organizational or some other way, providing some form of assistance.

What I want to be clear about is whether the city of Toronto council in any way supports or endorses this organization, either in its purposes, financially or otherwise. I didn't know whether, because of past association, Mr. Sparrow had any official recognition from the city of Toronto council in the activities of this particular organization.

Mayor Eggleton: The matter has not been before city council in any form whatsoever.

Ms. Fish: A supplementary, Mr. Chairman: Are there members of city council other than yourself, Alderman Hope and the delegation today, who are members of that group?

Mayor Eggleton: I am not a member of that group.

Ms. Fish: I said you are not, but are there other city council members who are?

Mayor Eggleton: I only know what I read and hear in the media, and apparently there are members of council involved, yes.

Mr. Williams: Just so that we are clear tomorrow--

Mayor Eggleton: You had better ask them.

Mr. Williams: I will. It was only because I wanted to be sure that this individual had had some association with council, whether it is one and the same person--

Mayor Eggleton: Oh, yes.

Mr. Williams:--and if so, whether there was any implied endorsement or support from your council because of that--

Mayor Eggleton: No. The matter has not been before city council.

Mr. Williams:--and whether the organization had come to your council seeking support.

Mayor Eggleton: No. As far as I know, it is a very recently established organization.

Mr. Williams: That is all I want to know. I gather, if Mr. Sparrow is involved, it may be holding itself out as an independent organization. I don't know that it would be without some biases, and I just didn't know whether council had seen fit to support this organization.

Mayor Eggleton: No. Council has not addressed that question and has not said anything regarding the organization.

Mr. Wrye: This is not addressed to the delegation, Mr. Chairman, but before we break for lunch I want to say that there has been much talk over the last two days about 90 per cent of complaints being dealt with informally. I am just wondering if we can get from Mr. Hilton some kind of breakdown of where these figures are coming from, the most recent Metro police figures, not only as to how they are dealt with but also what kind of resolution there is. Ninety per cent is just a number, and there has been talk about the basis on which--

Mr. Hilton: My advice, Mr. Wrye, is that those figures came from the Ontario Police Commission. We asked them because they are involved in the present process.

Mr. Wrye: Can we get information on how that 90 per cent

breaks down, the numbers that are resolved with an apology, with a withdrawal by the complainant, or whatever other method? I haven't seen anything like that.

Mr. Hilton: I don't know that I can. But I will try to do that.

Mr. Philip: (inaudible).

Mr. Hilton: I don't know that I said no, but if you say I did, I guess I did.

Mr. Philip: If I recall your answer, it was that you had no idea of how those figures could be arrived at. You admitted that the figures may be meaningless, that people may simply withdraw their objections because they are not getting anywhere.

Mr. Chairman: The deputy will attempt to get that information. Thank you very much for your presentation, gentlemen.

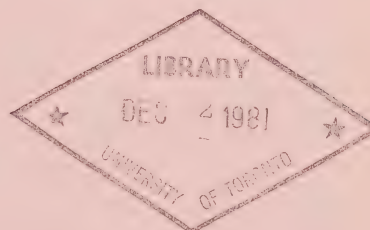
The committee recessed at 12:09 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT

WEDNESDAY, SEPTEMBER 23, 1981

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Williams, J. (Oriole PC)
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Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:
Hilton, J. D., Deputy Minister
Ritchie, J. M., Director, Office of Legal Services

Witnesses:

From the National Black Coalition of Canada:
Anthony, S., Vice-President, National Office
Dillard, J., Executive Secretary
Head, Dr. W., President
Skandarajah, S., President, Toronto Chapter

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, September 23, 1981

The committee resumed at 2:17 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: We now have our quorum. May we resume?

The next group of witnesses are Mr. Anthony and Mr. Dillard from the National Black Coalition of Canada. Dr. Wilson Head, I am advised, is also here.

Would you like to come forward, perhaps, along that end with the microphones? Who is the primary spokesman?

Mr. Anthony: I am; Sylvester Anthony.

Mr. Chairman: Would you identify the people with you--perhaps introduce them?

Mr. Anthony: On the far left is Dr. Wilson Head, who is the president of the National Black Coalition of Canada; to his right is Mr. Jesse Dillard, executive secretary of the NBCC; and to my right is Mr. Sri Skandarajah, who is the president of the Toronto chapter of the National Black Coalition of Canada.

Mr. Chairman: Fine. Thank you. Carry on, if you would, please.

Mr. Anthony: My appearance before you today, as you consider Bill 68, reminds me of a story I read in a community newsletter. The story talks of two blacks standing on the roadside who were hit by a white truck driver. So great was the impact that one of the blacks crashed through the windshield into the truck. The other was hurled several yards away. A white policeman arrived on the scene and charged the two blacks, one for break and enter, the other for leaving the scene of an accident.

The mere invention of such a story proves the potential treatment nonwhites can expect at police hands; the very absurdity of the story reflects the fear and suspicion ethnic minorities have about police practices. The charges of unfair, unjust and harsh treatment against the police, therefore, need to be examined closely. Too often we hear of Judge Phil Givens, the chairman of the board of police commissioners, defending the men and women claimed to be "among the finest in the world." We, too, want them to remain the finest, but we need more than defences. We need

positive assurances to allay the fears of ethnic and other minorities, for they, too, require to be served and protected.

"The government of Ontario affirms the strong concern and deep respect for fundamental rights and liberties which characterize the attitude of the vast majority of this province's citizens. The attack on racism has been under way for some time in Ontario. The government intends to continue to give leadership, support and encouragement to many agencies, both governmental and private, organizations and individuals who are working to eradicate the residual racism which still lurks in this province. We will meet racial violence with the full force of the criminal law, counter racial discrimination with committed enforcement of human rights legislation and move to eradicate racist attitudes with effective educative initiatives." This is a quote taken from Forward Together, a statement of response to issues raised by the Ubale report in April 1978.

The NBCC, among many other groups in the province, especially in Metro, remains unconvinced of the government's commitment to reducing racial tension and improving relations between visible minorities and the police. In fact, the action of the government since the introduction of Bill 68 in May of this year is a further indication of its insensitivity and its lack of appreciation for and understanding of minority group attitudes towards reviews of police behaviour by the police themselves.

Not only has the government provided us with a piece of legislation for which there is virtually no support among the minority communities who have demanded the reform; it has proceeded, even before deputations could be made before you and even before the members of the committee could study and probably suggest changes in the bill, to appoint a public complaints commissioner.

In its own arrogant way, the government has almost predetermined the course that this hearing is going to take. So much, then, for the farce that passes as democracy. So much for the notion that we as directly affected and concerned groups have an opportunity to contribute to the formulation of legislation that concerns our wellbeing.

Let it not be said, however, that we did not try to prevent a bad situation from becoming worse. We have seen stories in the police association's internal publication, News and Views, attacking blacks, gays, Jews, Catholics, et cetera. We have heard of stories of constant harassment of black youth by Metro police in the Albion Mall area, in the Jane-Finch area, in the downtown area.

Daily we receive complaints of police abuse and misconduct. After numerous complaints of police abuse, we experienced the killing of Albert Johnson in his own home; and there were eight other civilian deaths at the hands of the police. We witnessed over 2,000 black people demonstrating for over eight miles through the streets of Toronto in protest against the shooting of Albert Johnson.

Mr. Breithaupt: These eight other deaths that you speak of: during what period of time?

Mr. Anthony: In 1978.

Mr. Breithaupt: In 1978. Thank you.

Mr. Anthony: We heard of stories of the demotion of an ambulance dispatcher who referred to Buddy Evans--you might remember him--as a "nigger...who won't be missed." We were told of the police sergeant who ordered ambulance attendants not to give first aid to Buddy Evans or to transport him to hospital.

Mal Connolly, then president of the police association, accuses the black community of being the "problem," and he says we should come in to talk to him rather than incite problems. I think former superintendent Ken Shultz also had his turn at taking a swipe at the black community.

While all this happens, commissions are established by the government, and they all conclude in one way or another that the existing procedures for handling complaints from citizens against the police are inadequate. They all recommend the creation of an independent tribunal to investigate and, where warranted, prosecute cases of police misconduct.

All along, we as responsible members of our communities have concurred with these recommendations. We, too, have been calling for a completely independent civilian-controlled complaint mechanism for investigating allegations of misconduct against the Metropolitan Toronto Police. We have consistently argued that the present police complaints process was ineffective and unworkable. We have argued that the effectiveness of the police department ultimately rests upon the degree of trust and co-operation it receives from the public. We have warned that this trust and co-operation cannot be maintained if the present procedure for dealing with complaints remains in place.

We have identified, as others have, a few of the major flaws in the present complaint process. First and most important, the system lacked the essential quality of independence. Further, it lacked an opportunity for participation by all the parties affected, and it lacked access to the press and to the public.

For these same reasons and more, the National Black Coalition of Canada, Metropolitan Toronto chapter, firmly and unreservedly rejects Bill 68 as it now appears before you. In its present form, Bill 68 is as inadequate as the existing complaints process it hopes to replace. Bill 68 provides us with a combination of police investigation--and, I might suggest, a curious one--and some form of independent civilian review in the person of a public complaints commissioner, who has the power to start his own investigation of a complaint against a police officer, but only 30 days after the initial investigation has started or after he receives the first interim report.

Now, if he wants to intervene before the 30-day period he must notify the police chief of his intention in writing, and the

police chief in turn will apply to the Supreme Court of Ontario to prevent the commissioner from starting an investigation during the 30-day period. So much for this one.

It has never been our intention, nor is it now mine, to question the integrity of those persons charged with the responsibility of supervising the police department, or, for that matter, of those who sit on the board of police commissioners. The point, however, is: How can we reasonably expect the people who have been put in charge of the police force--and by that I refer to what we call the upper- and middle-management levels up to and including the police chief and board of police commissioners--to investigate allegations of misconduct against police officers without appearing to be biased? Therein lies the fundamental conflict: The chief of police, the police commission, the police supervisors and the rest are all ultimately responsible for the conduct of the officers being investigated.

Even if it were possible that a complaint were to be fairly adjudicated, that would not seem to be the case. Has it not been a fundamental concept in this society that not only must justice be done but must be manifestly seen to be done? Is this maxim not of crucial importance here?

To leave the initial investigation in the hands of the police will result in discouraging people from making their complaints. The NBCC has had this experience over and over again. We have not been able to convince members of our community to lay complaints against the police with the police. They are afraid of complaining to the police about the police.

We do recognize the ability of the public complaints commissioner to conduct his own investigation. It must be stressed, however, that this cannot happen until after the 30-day period. It certainly is not too difficult to imagine the number of things that could happen in the interim: evidence could be lost, reports could be written in such a way as to influence the public complaints commissioner against the complainant, et cetera. This leaves the police investigation vulnerable to the charge of covering up for the protection of fellow officers.

As long as these suspicions remain, Bill 68 does not deal with the first and most fundamental concern: the appearance of bias in dealing with complaints against police officers. As we have said before, no matter how fair in fact the investigation may be it will not be regarded by the public as being fair.

2:30 p.m.

On to our second point: Bill 68 has been referred to by some as a police protection act. We could not agree more. It is our contention that the protections enjoyed by police officers under Bill 68 are too numerous and excessive. It must be noted that none of these protections is afforded any other profession in this province suspected of misconduct involving members of the public. Under this bill, the police officer has more protections than a person has under the Criminal Code, even if the officer does not

face criminal consequences such as imprisonment, fines or probation.

Some examples of the protections enjoyed--and I am sure you will have more there--are:

(a) The right to be investigated by members of their own police force.

(b) The right to be informed of the complaint before the investigation begins. In criminal investigations, police officers try to keep suspects in the dark as long as possible in order to facilitate the investigation. Why then should police officers be treated differently?

(c) The right to examine documentary evidence before the hearing of the complaint against them. The complainant has no such right to see the officer's evidence.

(d) The right to remain silent. All other professionals regulated by statute in this province can be compelled to attend and give evidence at hearings convened to consider complaints against them. If they refuse to testify, they can ultimately be imprisoned for contempt.

(e) The right to prohibit any confession made by the officer to an investigator from being used against the officer at his hearing. What would be the reaction of the police if such rights were given to persons charged with criminal offences? No other professionals, to our knowledge, have this protection.

(f) The right to have the complaint dismissed unless it is proven beyond a reasonable doubt. This is a criminal standard of proof. Is the nature of the remedies in this case sufficiently grave to warrant such a high standard of proof not afforded any other profession?

(g) To top it all off, the officer has the right to have his legal costs paid by the police commission if the commission deems it fit to do so. No one apparently is concerned about the legal costs to the complainant.

The composition of the police complaints board is unsatisfactory and unfair. The bill provides for one third of the members to be jointly nominated by the Metro police commission and the police association. Another third will be nominees of Metro council and yet another third will consist of persons with training in law.

There is no doubt that the interests of the police commission and the police association most often will be implicated in hearings before the board. Why then should the bill allow for the participation of these interests in the absence of the aggrieved interests? There is absolutely no provision for representation of those of us who are most often victims of police misconduct. The public therefore must have a direct say in who will represent them on the police complaints board.

Time does not permit the further elaboration of areas of the bill we find totally unacceptable. Suffice it to say, however, for the reasons enumerated therein, we cannot lend our support to this legislation.

Our recommendations: In our view, one decision is imperative. Bill 68 must be withdrawn and a new police complaints bill introduced in its place which, among other things, will include the following provisions:

(a) an independent investigation of all civilian complaints against the police from the time they are lodged;

(b) no greater procedural protections be given to police officers than that given to other professionals;

(c) a finding of misconduct against a police officer, since it affects employment purposes, need not require the criminal standard of proof; and, among a number of other recommendations we could make

(d) One third of the members of the police complaints board be made up of people elected by the public in municipal elections.

Mr. Chairman: Thank you very much. Mr. Deputy Minister, would you like to respond?

Mr. Hilton: No. I do not propose to respond. I merely wish to thank Mr. Anthony for the considered views of his organization, which will duly be taken into our consideration.

Mr. Breithaupt: I just have a couple of questions. First, with respect to the last recommendation you made, that one third of the members of the police complaints board be made up of people elected by the public in municipal elections, do you envisage this as being a separate group of persons to be elected, or do you mean that municipal councillors or other representatives are the kinds of people who are appointed to the board?

Mr. Anthony: No. We mean a separate group of people to be elected in the same way that school trustees are now elected.

Mr. Breithaupt: All right. If that is the case, then, a second question: You are as concerned as we in the opposition are as to the makeup of the board and as to the assurance that there will be the opportunity for balancing a variety of interests. To do that, of course, it may be that persons appointed by any of the three groups now able to make appointments under this bill--the police side of things, Metro council or, in effect, the cabinet--could include many or several of the 400,000 visible minority people referred to this morning by Dr. Hill.

Would the appointment of persons from the most particularly involved minority groups, by any or all three of the present blocs, resolve some of your concerns as to representation?

Mr. Skandarajah: If I might respond to that, sir, I think it is the experience of citizens that appointments usually

tend to reflect the powers that be. A fairer procedure would be, as Mr. Anthony mentioned, to have people elected on the same basis as school trustees. In that instance, not only would they be representing people who would probably be minorities but also they would be representing the community at large, in the sense of it being a Metropolitan Toronto community.

Mr. Breithaupt: Yes. You would have the opportunity that those likely to be interested in being candidates would be very much interested and involved in this area. The only thing that bothers me there, I suppose, is the percentage turnout for elections generally, particularly municipal elections, which is ordinarily low. I'm sure we would all want it to be better, but it isn't that way.

Mr. Anthony: Let me just say, that is a risk we took also, even in electing you, for that matter.

Mr. Breithaupt: You cannot fault the system just because the turnout is low, of course.

Dr. Head: I think what you are suggesting would be a little better than what we now see before us, but not much. I think we need a way to get--it is quite possible that the cabinet would appoint only certain types of people. If we were to use the experience of the present system, in terms of appointments to other boards and commissions, we certainly would have no reason to believe that any blacks or browns or yellows would be appointed. If you look at the other boards of commission throughout the whole province, you see very rarely a black person or a brown person or a yellow person sitting on these commissions.

Mr. Breithaupt: Although one would want to assume in this situation that the expectation should be that all such appointees would be involved, to balance up the possible lack of appointees in the other two areas, or at least to reflect the mixture of the community.

Dr. Head: This is what we ought to have, I think, in all our commissions. I think you are quite right. One of our biggest complaints in this province is that the powers that be who appoint people almost entirely appoint from the right wing. It is as solidified as the southern primaries in the US used to be a few years ago--

Mr. Breithaupt: Very few Liberals get appointed, I can attest.

Dr. Head: Yes. If this is supposed to be a commission representing the peers of the people who are most concerned, then obviously it would not do so under present circumstances unless there is a massive change in the way committees and boards are now appointed.

2:40 p.m.

Mr. Wrye: Mr. Chairman, if I may, I would like to just pursue this area a little bit, because I think it is important. We

have heard from almost every group that has spoken with us some concern over the present makeup of the board as proposed in Bill 68, and you have presented us with another option. I must tell you that, as you know, I have spoken of those concerns at our earlier meeting, back in May, I believe, and I have remained with two concerns, and I should like you to speak to them.

Number one is the politicizing of the electoral process, where you would have on the one hand certain candidates for this elected board who would be perceived to be taking a pro-police stand, and on the other hand certain candidates who would be perceived to be taking an anti-police stand. That is one concern, and it would be the kind of confrontational situation we can really do without on balance. I think you would agree that co-operation, as we arrive at it, is certainly better than confrontation.

The second problem, and I will speak directly to you gentlemen as the minority representatives, is that the voter turnout in the so-called downtown wards, where the visible minorities reside, is significantly lower than the voter turnout in the so-called suburban wards, where the visible minorities are not. The distinct possibility exists, unless you set up some sort of a system, that the visible minorities under this elected system, which you hope will work, will work in exactly the opposite way than you would wish.

Mr. Breithaupt: If it were on a Metro-wide base.

Mr. Wrye: Particularly on a Metro-wide basis.

Mr. Anthony: As I said, in terms of the question of voter turnout, that is a risk we take even with electing you. We probably don't have much say in your being elected, but that does not mean you will not attend to our concerns.

But with regard to the question of politicizing the electoral process, if there is any area in terms of municipal elections that minority communities--in this case, I can speak specifically of the black community--which has (inaudible) at the school board level. We have been able successfully to elect black people to a number of wards in the city. And where they have not been black people, they have been people who are sympathetic to the concerns of minority communities.

That is certainly a much better solution than the one being put before us now, where it was mentioned there is absolutely no indication--given the historical situation, we are not convinced that anything will differ.

Mr. Hilton: May I just comment on the subject that is under discussion? It has not been a tradition in this country, nor in Britain, that our judicial persons are elected. I know it is in the United States.

Mr. Breithaupt: Ours are usually defeated.

Mr. Hilton: That was Mr. Chief Justice McRuer's remark.

In any event, the appointment has not been politicized to that degree. And it is my respectful submission, inasmuch as the body we are now discussing is a quasijudicial body with the power to fire and cause a man to lose his livelihood and to fine, that it would be a movement away from what has been our tradition in the election of such bodies to consider this suggestion.

I must say I find it a very interesting suggestion. It has not been made by others, and I hadn't thought of it until this moment.

Mr. Philip: You are not suggesting that the appointment of the latest Supreme Court judge in the US is not a political action of the moment, having read, as I am sure you have, the inquisition, almost, that she underwent in order to prove her strong Tory biases before she could possibly get that post?

Mr. Hilton: Yes. I am speaking of the British tradition as exercised (inaudible)

Mr. Williams: Mr. Chairman, just a point, if I might, because that was the very issue I was going to raise in questioning.

I must say, with respect, that I found that of all your recommendations to be what I felt perhaps would be the most unworkable from a practical point of view, given that the boards and committees that operate, certainly in this jurisdiction, are normally set up by way of appointment of citizens at large, recommended by elected people.

In this case, as you know, there is provision in the bill that the Metropolitan Toronto council would enjoy that privilege and right to select from people within Metro Toronto to make up that one-third composition so that they would be citizens at large.

Mr. Breithaupt: That is five persons.

Mr. Williams: Mechanically, I believe you would achieve the same purpose, to get citizens at large from all cross-sections in the community, because there would be input from all members of that council. This is the traditional way in which members for our planning boards, committees of adjustment, library boards or other committees or councils are appointed. I think it would be difficult to find an exception being made for citizens at large being elected for one specific board. Even at the provincial level, boards and committees are done mutually by way of appointment.

So, while the purpose and intent can be fulfilled under section 4, I think it can be achieved in a more practical way by the appointment approach rather than by election at large. That is my feeling, having been involved in that process for so many years. But I think the the intent is good; it parallels what is in the bill, but I think the mechanism in the bill is more appropriate.

Mr. Skandarajah: Mr. Chairman, I think ought to respond

to the last two comments, because to some degree it leaves an implied impression that the composition of the board reflects the traditions of the judicial systems here as well as in England. I have lived in England and here long enough to know fully well that in fact it is a break in the tradition. For you can see quite clearly there is an interest group represented in one third. So please don't mislead us into thinking that you are following the traditions that are established in the United Kingdom and here. I beg to differ.

Mr. Hilton: I only said in so far as being elected was concerned. You are quite right, but you are taking from my remarks something far more than I made with them. I just said it has not been our tradition to elect. Now, it does reflect, or it was thought to reflect, something, not exactly, but something of our labour traditions in relation to the setting up our boards of arbitration.

Mr. Philip: But there is a very big difference, namely, that in a labour relation situation you also have the complainant represented there. What we have in this bill is only one side, which is a vested interest, represented, no matter how well intentioned it is, and nobody representing the other side. The only way you can deal with that is either to remove one side or to add one other side.

Mr. Hilton: May I respond to that, Mr. Chairman? It was thought, perhaps inaccurately, but the intention was that those who were named by the elected representatives of the municipality and municipal council would represent the public at large.

Mr. Philip: If I may, just respond to that, Mr. Chairman: That is the very same kind of mistake we got into with the whole Ontario housing inquiry that was before this committee, namely, that an appointment is not a representative. There is a distinct difference.

In the case of those people who will be representing the police association, they are representatives and answerable back to that association. An appointment of someone at large, even at large in the particular community that this group represents, does not make them responsible to that group. What you have is somebody out there at large whose commitments are to no one in particular, and on the other side someone who has very definite commitments and can be removed by a specific group. I say to you that is a very unbalanced system.

Mr. Williams: Mr. Chairman, lest there be any misunderstanding, I think section 4 specifically provides that where the Metropolitan police commission and Metropolitan Toronto police association can jointly recommend to the Solicitor General for appointment to the board certain members of people, it clearly states that they shall be other than police officers; so they are not people actively working with their colleagues who are before the board because of complaints lodged, which I think is implied in your statement.

2:50 p.m.

Mr. Hilton: I will speak to Mr. Philip, if I may. Nobody can remove them.

Mr. Williams: So they also are citizens at large.

Mr. Wrye: The deputy has made the point himself, I think, that in setting up the system there was an attempt to mirror the methods of arbitration which we now have. It was clear that you had in mind that the appointments of Metro council would in effect be the supporters, to coin a word, of the complainant. I don't think that is necessarily true at all.

Mr. Hilton: It is not the complainant; it is the citizens.

Mr. Wrye: Of the citizens and, by extension, the complainants. It is very clear that the appointees of the commission and the association are going to have the concerns of the association and the commission much closer to them than would the appointees of Metro council. I don't think you come close to balancing the appointments in the way, for example, that labour arbitrations do. I think we have a long way to go.

Mr. Williams: What about the people trained in law? Are you suggesting they are at the orders of the police?

Mr. Wrye: Those are in effect the chairman, I would suggest to you.

Mr. Williams: You might have an Aubrey Golden or somebody like that sitting on there.

Mr. Chairman: Gentlemen, we are bouncing around with a lot of comments. We have lost a little bit of order. Has Mr. Breithaupt finished?

Mr. Breithaupt: Yes. Thank you, Mr. Chairman. I think Dr. Head had a comment.

Dr. Head: I think this is an interesting but, in our view, very minor point. The major point we are concerned about is what was stated in the brief; that is, we are concerned about investigation in the first place. We have heard the Attorney General say that it has to be that way; that you cannot investigate the police, that only the police can investigate the police. Yet we find in the bill that the commissioner would have the power to investigate after 30 days. We wonder who is going to investigate.

We also noticed that in the investigation of the RCMP by the McDonald commission that other than RCMP people investigated the RCMP. We found it very puzzling that the only people who can investigate the police are the police. I think we made it clear in the brief; we have made it clear many times before, in the press and in our public meetings, that we don't trust the police to investigate the police.

We don't say that from an abstract or intellectual point of

view; we say that on the basis of experience. Our experience has been that the police harass, threaten, intimidate and beat up people, and get away with it without any real concern. When you file a complaint, not only are you discouraged but also at this time you are read a statement to the effect that, if your complaint is not substantiated, you can then be charged for public mischief et cetera. I know no more effective way than that to try to get people to not complain.

I don't say that the total police force in Metropolitan Toronto goes around beating up people, but I know some do, and I know the police know some do. I know cases where people have told me--policeman themselves have reported to me--that they walked into a room where people were being beaten up and that the beating stopped when a black person walked into a room and so on. This happens in every big city; it doesn't just happen here. I have lived in many other cities, and it happens there too.

Mr. Williams: Sir, could I get a clarification? You said they have walked into rooms where people are being beaten up?

Dr. Head: Right.

Mr. Williams: By the police or by other citizens?

Dr. Head: By the police. I have had people come to me on many occasions. I can name names if I wish to do so; I don't wish to do so here, because I don't want them harassed. The police actually go as far as to call them up and say: "What are you going to do if you have been beaten up? If you are going to complain, then we are going to charge you." In other words, the police themselves in this city are now engaging in a systematic campaign to discourage the filing of complaints against themselves; even if they have been beaten up and so on.

Even in cases where doctors are ready to come forward with a statement after they have treated these people who have been beaten up, the complainant is afraid to do so--even when a doctor is complaining. This kind of thing has been laid before the police commission. Not long ago in a meeting we had at the National Black Coalition of Canada, where Mr. Anthony works, people told this to Mr. Givens, Mr. Flynn and members of the police commission, and yet they still deny that it happens.

What we are getting here is a massive case of denial. This leads us to not trust that kind of complaint procedure. I, for one, have no faith whatsoever in the ability of the police to investigate themselves. Even in the case of the shooting of Albert Johnson, the Attorney General was able to get the OPP to do their investigation, not the Metro police. The OPP was called in to do the investigation. Even they have some questions about this. Nevertheless, they present to you a united front, saying, "We will do it." Or they say, "It will never work; it has never worked any place." We have to ask the question, "Why has it never worked?" "Because the police will not co-operate."

Let me ask you, gentlemen, are the police above the law? Do they have a special privilege so they can afford not to co-operate

if they do not want to? Are we putting our policemen in a position of privilege and power that exists nowhere else in democratic society to my knowledge? It does exist in some other kinds of societies. I think we have to be careful.

I would like to make my final point, which is this. I do not know one single minority group, whether they are Indians, Chinese, blacks, Pakistani, Koreans or any other group on whose behalf you are presumably being asked to act, that is in favour of this bill. Every single visible minority group I know is opposed to this bill. I know nobody who is in favour of it except the police and some (inaudible) groups. As Mr. Anthony pointed out a minute ago, this is a police protection bill. This is not a bill to help those of us who have been the victims of police brutality.

Mr. Hilton: Mr. Chairman, if I may respond to Dr. Head: I was with the Attorney General in his office at King Street at the time of the unfortunate Albert Johnson circumstance. I believe you came there, and we met and discussed procedures at that time.

This bill does not affect the criminal procedure. If it is perceived that that which is done is quasicriminal, the investigation can be carried on in a criminal sense towards a criminal prosecution by their own police force; that is, Metro's police force. Or if the chief and the police commission, as was the case in Albert Johnson, were persuaded or could be persuaded in the interests of the alleviation of racial tensions, to seek the support of any other police force, be it Ottawa, Hamilton--it happened in that case to be the OPP who came and were asked to do it--that can still happen. This bill does not affect that one iota, sir.

Mr. Anthony: So why have the bill?

Mr. Hilton: The bill is on a complaints basis, not on a criminal investigation, sir.

You made certain remarks, Doctor, in relation to the recent Judge McDonald commission touching the RCMP. Perhaps you have not read it, sir. Mr. McMurtry, at the opening of these proceedings, read into the record--and I do not propose to read them over again, because all the members of the committee heard them and have them before them in printed text--the recommendations in that that the police, the RCMP, be afforded the opportunity, first of all, to investigate themselves in relation to any complaints that are laid. McDonald did not support what you have just said he did. In fact, his report is to the contrary, sir--if I understood you correctly.

Dr. Head: It is my understanding that the McDonald commission had their own investigators.

Mr. Hilton: At that time they had their own investigators because that was a royal commission. But would you seek to make a royal commission out of every minor complaint?

Mr. Anthony: Mr. Chairman, with respect, I think that is one thing that is being missed. Albert Johnson might not have

killed had there been the kind of complaints procedure mechanism that would have paid attention to the numerous complaints he made prior to his being killed.

You might recall that the police commission denied ever receiving a letter from the human rights commission with regard to Albert Johnson's complaints, and that a couple of days afterwards they did find a letter in the file.

Had there been the kind of complaints procedure we are talking about where allegations of police misconduct would have been investigated and not set aside or covered up, or where people would not be intimidated to withdraw, Albert just might be alive today. Therefore, there would have been no need to call in the OPP. We would prefer not to have a complaints bureau.

3 p.m.

Mr. Skandarajah: I want to deal with two particular points that have been made. Unfortunately, they have been glossed over. In my opinion, it is unfair for this committee to be informed that there is no jurisdiction in which a purely civilian investigative procedure does not work. I believe quite firmly that a modified form of that works very well in Chicago, quite contrary to the information that has been put about.

Mr. Hilton: Have you been there to look at it?

Mr. Skandarajah: With respect, sir, I think the information that some of us sought and received proves fairly sufficiently that it does work.

My point is simply this: If, in fact--and I underscore that--what is being proposed here is an experiment for three years, why not try the unusual, which is what we are asking for, namely, why not try for three years having civilian investigators dealing with this matter? If in three years it proves unworkable, then maybe everybody would become realistic and accept a compromise that is somewhere between the two.

The other thing I want to emphasize is this. Even in the Canadian jurisdiction--I will go back to the McDonald commission--they have used investigators who are civilians. There might be a royal commission. They are investigators who are civilians. I do not need to underscore to you the complexity of their investigation. Again, the point is made that they were quite capable of investigating a very complex matter very thoroughly and coming up with several unexpected answers.

Again, it goes to prove the point that civilians can very well investigate what is being described as noncriminal-type investigations. I think you can draw parallels to the Ontario Human Rights Commission investigators, who are civilians. It can be done. The problem is lack of co-operation. Dr. Head has made the point--

Mr. Hilton: May I comment on both your remarks now, sir?

Mr. Skandarajah: I have not finished them.

Mr. Hilton: Oh, I am sorry.

Mr. Skandarajah: Dr. Head has made the point that what we are letting ourselves into with this bill in particular is a section of society--and I regard the police as part of society; they are not a cut above or they are not special. If we do not make sure that the laws are enforced and that any complaints dealing with the abuse of those laws are not properly and fairly investigated, we are heading not in a democratic way, not towards an ideal democratic society, but in a direction that we will regret.

Mr. Hilton: First of all, in relation to Chicago, you will recall that in the Toronto Star there were several quite extensive articles by a young lady reporter of that paper--

Mr. Skandarajah: Marilyn Dunlop.

Mr. Hilton: Yes--in relation to the complaints procedure in Chicago. We said, "Ho, ho. This is something we did not know." So we sent an investigator, one of our draftsmen of this legislation, to Chicago to find out about their procedures and what they did.

It is true that Chicago does have some civilian investigators, but those civilian investigators are a branch of the police, hired by and capable of being fired by the chief of police of Chicago. The only difference between them and a detective in plain clothes is that they are not sworn in as policemen. Other than that, they are policemen in every sense.

Accordingly, it was determined by us--all who read their legislation and were there; I was not there, but those who went there to see--that it was not a civilian body which would be acceptable to you or to any other group who seeks to put the argument forward that you are so ably putting forward.

So far as the RCMP are concerned, there are two things that perhaps you do not know. The investigators who were employed by the McDonald commission were not civilians. We sent senior police officers from the OPP by secondment and loan to assist that commission. Quebec sent senior police officers, and their investigators were all police officers from one place or another. They were not civilians.

So far as the McDonald commission is concerned, I will now read, although I was not going to take the time of the committee, from the McDonald report. He is investigating the RCMP and the operation of the RCMP:

"There are compelling reasons for having the RCMP investigate its own members in the majority of cases. First, as we explained earlier in the chapter, many complaints can be handled informally by the complainant and the RCMP member involved, thus avoiding the need for costly investigation.

"Second, having outsiders completely in charge of investigating misconduct would undermine the sense of responsibility within the RCMP for uncovering and preventing questionable behaviour within their own ranks.

"Third, we believe that the level of co-operation given to the RCMP investigators will generally be higher than that given to outsiders."

Later in the chapter he states:

"When a citizen is dissatisfied with the disposition by the RCMP of his complaint and brings his allegations to the attention of the inspector"--and the inspector is the same as the PCC in our legislation--"the latter would decide whether further inquiry was necessary." Exactly as in our legislation.

Further on he says:

"The system we are proposing places primary responsibility for investigating and disposing of complaints with the RCMP. We believe this is necessary if the force is to take seriously the need to make changes on a continuing basis to reduce the likelihood of further misconduct and if it is to continue to be responsible for ensuring a proper standard of conduct on the part of its members. The inspector"--and that is the PCC; the inspector of police practices, they call him--"would act as kind of a safety valve for the system."

It is for these reasons that McDonald has copied our bill rather directly in his recommendations. In considering this, as Mr. McMurtry has pointed out time and again to those who have appeared here before you, there was great approval of Arthur Maloney's report by all parts of our community. We have followed Arthur Maloney in this particular, because Maloney has stated without equivocation that the police must be given the first opportunity to investigate this matter.

Judge René Marin, looking at RCMP procedures in 1975, said the same thing. Mr. Justice Morand adopted Arthur Maloney's position. The British Parliament, having discussed it generally, came to the same conclusion. Indeed, the three-year report that was just put in last year supports the same position.

We have sought not only in the United States where, as was stated quite properly by your representative in presenting your brief, there is a difference. In looking at those who have studied in depth in this community and those who have studied in Great Britain, that community, we find a consistency and we do not find anybody objecting. In addition to this, Cardinal Carter made approving remarks from which similar understanding can be drawn.

Therefore, in coming to the conclusion that we should do it the way the bill suggests, it is not just something growing out of whole cloth, out of the minds of the people who are politically involved or those of us who are civil servants who have been considering it. It has come from the advice of learned people, from extensive studies, and we would ask your support and the

support of the visible minority groups to see if we can justify the findings that they, after long travail, have reported. We believe it will work, not by confrontation, but by co-operation.

3:10 p.m.

Mr. Head: I would like to speak to that.

Mr. Philip: May I speak to some of the comments made by the deputy minister, please?

In dealing with the Chicago situation, I think the studies show that rather than the Chicago situation being a failure because of the direction in which it went, indeed the report of the Chicago law enforcement study group clearly indicates that any failures were there because it did not go far enough.

If you read it, you see that some of the recommendations are to make it much closer to the kinds of recommendations that these gentlemen are advocating. They are not to abolish the Chicago model, but rather to make it closer to the very model that the Canadian Civil Liberties Association and the group before us is now advocating.

I won't go through all the recommendations, but just randomly. "Situations contributing to investigator role confusion should be minimized." What these gentlemen are asking for is that the investigator not have a role confusion that puts him in a position where he is the police officer but yet he is not the police officer. That is one of their major recommendations of the Chicago inquiry into the Chicago situation.

What the inquiry suggests is that they not abandon the way in which Chicago has gone but go further. They suggest they go further in the very direction that we are asking for and that the opposition is asking for, at least the New Democratic Party, which I represent, and, in fairness, what some of the Liberals are indicating.

Then it says the operations manual should be rewritten, and it goes into training. It also shows in its conclusions that one of the problems with the Chicago model is that the superintendent has ignored legitimate opportunities to convince the community of the accomplishments of the Chicago experiment and has not innovatively utilized the capabilities of this system.

Mr. Mitchell: Mr. Chairman, may I just ask Mr. Philip a question? In the light of the comments you are making, are you suggesting that the way the Chicago system works, where they are civilians directly reporting to the chief, is what we should have here?

Mr. Philip: No. You know that I am not.

Mr. Chairman: Mr. Mitchell, I am sorry; you are quite out of order. I let you go for a moment, sir, in the hope that it was a point of order. You will get a chance; I have you marked

down after Dr. Head, who wishes to make a remark here. Mr. Philip has the floor.

Mr. Philip: What I am saying is that, because Chicago has gone a certain route that may be referred to in terms of investigation by some of the groups that are opposed to the investigative technique proposed by this bill, to suggest that it has been a failure may be true in part. But it is a failure not because of the direction in which the Chicago experiment has gone, but because it has not gone far enough in the direction that these people are asking. That is the only point I wish to make on that. I understand I am on a list, though, to ask some questions of our deputation.

Mr. Hilton: Just a comment on that one thing. Do you want a Chicago here?

Mr. Philip: No. I said that. I do not know how many times I have to convince you and the Attorney General or Solicitor General, whichever cap he is wearing, that we have not said that. Either you are very slow learners or very poor listeners.

Mr. MacQuarrie: Mr. Chairman, a question of Mr. Philip.

Mr. Chairman: No, no, Mr. MacQuarrie.

Mr. Philip: I would be quite happy to become the minister, and then you could ask me as many questions as you want.

Mr. Chairman: Gentlemen, order. Dr. Head, you wish to make a comment?

Dr. Head: Yes. I would just like to make a statement. Our friend here--I am not sure of his name, but anyway--

Mr. Chairman: Mr. Hilton.

Dr. Head: --has submitted now a number of reports which he referred to as if they made clear-cut recommendations in one way or another, including Cardinal Carter's. Cardinal Carter did not make a clear-cut recommendation in favour of police investigating themselves by any means. I do not know how he drew that kind of conclusion from his report. Neither did Mr. Pitman nor others who have studied this.

The important matter here is that we have never had a genuine civilian (inaudible) I have seen anywhere. But whether we have or not is premature to some extent. The important thing now is that in Toronto you have a police force that has had a lot of respect and has lost it to a large extent, and is increasingly losing it. We cannot compare it with what works in Chicago. Chicago and Toronto are different places anyway; so are New York, Boston and London.

I do not want be alarmist here, but I want to make it very clear to you that we have in this city a place where we are getting the kind of anger, bitterness and hostility against the police which could easily make this become another Brixton,

another Liverpool, or some other place in England. People there said: "It couldn't happen here. We are shocked. We thought our police were loved."

Let me assure you, in Toronto, they may be loved on Bay Street, in Rosedale or in Forest Hill, but they are not loved among the visible minority groups in Toronto. This is because there is a certain degree of racism among the police. I do not say it is any more than among the general population; I have no way of knowing whether it is more or less or the same. The point I am making is that there is some.

What is happening, not only among blacks and browns, and particularly among blacks, is that many young people, whether white, black or what not, are getting really upset about the fact that they can be mistreated by the police with impunity.

If are going to sit back and talk about what worked in Chicago--I lived in Chicago. He keeps asking me, "Have you been to Chicago?" I lived there. I know the Chicago police force is one of the worst in the world. It is full of corruption. I can give you incident after incident that I have seen myself, with my own eyes, of the corruption. As far as I am concerned, it is not a good example anyway.

I am not talking about Chicago. I am talking about what we want to see in Ontario, particularly in Metropolitan Toronto. I want to see something here that will give people a sense of trust in the police again. I would like to see people feel the police are their friends.

In the past, in 1975, in the meeting where, at that time, our Metro chairman and our police chairman were concerned, Judge Bick spoke and used the phrase, "People are increasingly beginning to see the police as an army of occupation." That is more true today than it was in 1975.

If we are to sit here and argue that we have to protect the police, that we have to treat them with kid gloves, that they won't co-operate unless they have their own people investigating them, then we are setting the framework for the kind of bitterness and hostility that could explode in Toronto one, two, three or four years down the road.

Without being alarmist, I want to say to you in clear and certain terms, we do not trust the police to investigate themselves. I do not care how many examples you give, how many reports you quote; we do not trust the police to investigate themselves. If the government is going to force this on us, then so be it. But let the government take the responsibility.

Mr. Chairman: I believe Mr. Mitchell is next.

Mr. Mitchell: Mr. Chairman, my queries were in the way of comments which have since been covered by other speakers. I will defer to the next speaker.

Mr. Chairman: I believe Mr. Philip has been--

Mr. Wrye: Mr. Chairman, if I could, I would just make two very brief comments on what Mr. Hilton has said and by extension the comments Dr. Head has made.

If as we go on--and I hope we are going to evolve through the witnesses and others a system that is going to work--we are going to read sections of reports to prove one case or another, we can all read certain things into the record. I would read into the record something from the McDonald commission that allows the inspector of police practices--or the PCC in this case--the right to jump into an investigation where he is of the opinion that it is in the public interest. I notice that section 14(3) is certainly written in a very different kind of way.

I would make one other comment. I noted that Dr. Head referred to the deterioration of relations in the period since Judge Bick made some comments back in 1975, and a lot of discussion and a lot of comments the Solicitor General has made and continues to make to us are based on reports that are sometimes some six years old.

I am drawn to the comments that Mr. Maloney made back in 1975, where he said, on page 2(11), "I do not feel this is a mistrust"--the mistrust that would not allow the police to investigate themselves--"which at the present time is justified or deserved in Toronto."

I would hope this is exactly what this committee would be looking at; that is, whether the situation over the last six years has changed, which would force us to re-examine. Looking at the comments Mr. Maloney made in 1975 and Judge Morand made just one year later, in which he gave particular attention to the report of Mr. Maloney, have those circumstances changed in the last five years? It is on that basis that I think we are going to hopefully draw our conclusions as to whether we ought to have a police complaint--

Mr. MacQuarrie: How old is the McDonald report?

Mr. Wrye: Hopefully, we are going to listen to the witnesses over the next week.

Mr. MacQuarrie: You were referring to the age of some of the reports; I was wondering how old the McDonald report was.

Mr. Wrye: I was simply referring to the McDonald report in terms of its going against 14(3).

3:20 p.m.

Mr. Chairman: Mr. Anthony, you wish to respond to that, I believe.

Mr. Anthony: Well, to most of those things. I will be quite brief.

Again, we have some problems with the comparison of the Chicago model and other models, and the point has to be made.

Everyone is saying that Chicago is different from Toronto. The depth of the problem of mistrust of the police by the communities in Chicago, for instance, or in the States, is different. The racial problem in the States is at a different level than it is in this city, or we hope is not at that level. As such, we have to understand the fact that the model of Chicago may not be effective, or not as effective as it could be, partly because the police boards and commissions in Chicago have set out to make sure it does not work.

If what the government is saying to us is that the police commission and the police association--if they gave us an independent civilian review board--would set out to make it not work, then you should just come out and say that. Then, as Wilson Head said, you have to bear the consequences of what can happen. We do not intend to be alarmist there.

What we are saying, those of us who are in the front, those of us who daily receive complaints of police abuse--I, with three or others, have met with the board of police commissioners and with the race relations division of the board on numerous occasions. We cannot seem to get it through to them that there are real problems out there.

It is not a matter of whether this works there or whether that one works here. Where is this Canadian intuition, this sense of innovation? We always do things the Canadian way, a way different from everybody else. Where is that sense? Why is it that, because Chicago does not have one, we cannot have one here? Why is it that we cannot try it? If it does not work, then we can pinpoint why it didn't work.

I am suggesting to you that if the government were to proceed as it intends to proceed now with Bill 68--instead of providing the independent commission or board, which would at least create the sense of trust that is necessary--it would be no different from what we have now. People will simply not go, and I can assure you that we certainly will not be advising people to go.

I could list for you people we have sent to the commission who have been charged with public mischief, because their cases are unsubstantiated, who have been threatened. Again, we were warned simply because they were afraid to have it happen, because they feared the intimidation that might follow it.

Mr. Philip: Mr. Anthony, am I correct in what I am hearing you say, that an independent kind of police investigation would work here because of the fact the police have a maturity or are at a level of understanding that does not exist in other jurisdictions? Therefore, what you are doing is complimenting the maturity of the police and their ability to deal with a more open and democratic kind of investigative system.

Mr. Anthony: That is certainly what we are hoping. We are saying that we hope there is that maturity, that genuine intention of the police commission and of the government and the Solicitor General to maintain that sense of trust. In order to

maintain it, we will have to stop at this point.

We have insisted all along that we do not believe the whole police force goes around beating up everybody. What we do believe is that there is a significant percentage of the police department which involves itself in that kind of abuse, and what happens as a result is that the other part of the police force sets out to defend them in the interest of the institution itself. What we want to do is to rid the police department of that five per cent, or two per cent, or three per cent or 10 per cent of rotten apples.

Mr. Philip: Am I correct in my understanding of your position that when you say the investigation would be independent you would also expect, though, that the investigators be very well trained in police investigation methods, and indeed that some of them may be ex-police officers or people trained by one or more police forces in the past?

Mr. Anthony: That may well be the case. One of the problems we have is that the assumption all along has been that somehow or other police investigative methods or techniques cannot be taught; so it has been suggested that only police can investigate complaints. But how do the police get that knowledge or skill of how to investigate? It can be taught.

What we are envisaging here is that people will be taught to do it. It may be ex-policemen; it may be former policemen. Security firms have private investigators. There are lots of private investigators who go around doing investigative work.

Mr. Philip: Would you agree further that the kind of investigation needed in this work may even require training that would be a little different from the training of the ordinary police investigator? Not that it be less, but rather that it be more, in the sense that it would encompass all of the investigative techniques but, in addition, perhaps human relations and certain other techniques that would be necessary to cope with that kind of situation?

Mr. Anthony: Yes. We are saying that because--I think I read or heard a piece on the news last night about the Attorney General something to the effect that you do not have to lay the complaint with the police, but you can go lay it with the public complaints commissioner. I guess you can do the same thing by mail also. The problem for us is that the investigation will be done by the police.

With regard to laying the complaint and the kind of investigation you need: First of all, by removing the police--that is, the police themselves--from the investigation, what you do is you take away from a person who feels generally that he or she has been aggrieved to lay a complaint the possibility that he or she may be charged with public mischief. Which would encourage them to lay complaints, if in fact there was (inaudible) to complain.

But more than that, the Solicitor General has said a lot of the cases are being dealt with on a negotiated basis. What we are saying is that they are not being dealt with on a negotiated

basis. The form of negotiation that is taking place is a threat of punishment if you do complain. That is what I think the Solicitor General means by negotiation.

We are saying that, if you have independent investigators, that threat would not be there and maybe they would be resolved by negotiation. But the appearance of bias would no longer be there.

Mr. Philip: What I hear you saying is that it is not enough to have an independence of the investigator, but that these investigators must be extremely well trained in police work. In addition, there may be some extra qualities that you have to build in to the training. Therefore, simply taking police officers who are already investigators on a day-to-day basis, and plumping them a few blocks over and making them independent, might not be all that is necessary.

Mr. Anthony: Yes.

Mr. Chairman: I think Mr. Dillard had his--

Mr. Dillard: I will let him finish. I will let him continue the questioning, because I have something different to say.

Mr. Philip: One of the interesting things that I think did come out in this morning's Hansard, and I hope you will read what the minister said--let me approach it a different way. I will let you read it and then you will understand the line of my questioning.

Do you feel that your group represents the major thrust or thinking of a majority of people in the visible minority community? If you were to walk down the street and talk to whomever you met from that community, do you feel that your views represent, not that of an élite, but rather that of the average man in the community? Who are you representing, really?

3:30 p.m.

Mr. Anthony: I would say yes. Again, I guess I can ask you and the members of this committee the same question: Do you think that your views represent even the majority of views of the people who have elected you? I am not too sure of that on any particular issue. I don't think that is the question.

I can say, however, that when I speak here or elsewhere about police abuse, about the need to remove the bias from investigation and about the need to maintain the trust that people from all communities have in the police, which is waning every day, I think I am speaking for the majority, not only of black people but also for a number of white people.

I might advise you now that I also happen, through the NBCC, to be involved in the Citizens' Independent Review of Police Activities, CIRPA, and most of the complaints that we have received in CIRPA do not come from black people; they do not come only from what you may call visible minorities. I think the

majority of complaints we have up to this point come from white, lower-class people--poor, white people.

It is not simply a question here of whether we represent black people, or Chinese for that matter. It is a cross-section.

Mr. Skandarajah: I just want to add to that, Mr. Philip, that I am somewhat concerned about the slant that is unfortunately being given by Mr. McMurtry, that the people who are protesting about this particular bill do not represent the minority community. I think that is what you are really asking us about.

I think that is a very unfortunate set of circumstances. I wish Mr. McMurtry would refrain from doing that, because all that we will be doing is sweeping things under the carpet under the guise that the people who have come here--and I have no illusions that there is not a single minority group who are supporting this bill--do not represent people.

If this committee is to take that as gospel and be misled into thinking that this bill is going to get carte blanche support, you are very badly mistaken. I think the United Kingdom has made that mistake--I have just come back from there on Sunday--and I do not accept that what has been going on in the United Kingdom is racial. It is simply a situation where people are harrassed; blacks, whites and all sorts of other people are against authority--an authority perceived in the sense of the Bobby in uniform. I wish to God that we would still be able to look at the Bobby in the idealistic way. That, unfortunately, is not there. I think it is simply because these problems have not been dealt with.

Mr. McMurtry can go on saying things. I have not stood up to be elected to a parliamentary place or to a legislative body, but I certainly was elected as president of the Metro chapter; so to question who we represent is really trying not to get to grips with what is really going on. The best illustration is that at the municipal level it is only 20 per cent that elects people, but we do not go around questioning whether they have been elected or whether they represent people. I think one has to listen.

Mr. Philip: Is it also fair to say that a majority of the groups that would be associated with you would also have lawyers and various other people who would have closely examined the bill?

Dr. Head: Yes, we do.

Mr. Philip: Therefore, any accusation that your community does not understand the bill would be, in your judgement, simply nonsensical. Is that correct?

Mr. Skandarajah: Very much so.

Dr. Head: We have discussed that bill for over a year now.

Mr. Philip: If you read Hansard this morning, and the

minister's comments, you may find his comments interesting, although somewhat annoying.

I would like to ask Mr. Skandarajah questions concerning the British situation, because the Solicitor General has been informing us that all the evidence from Britain indicates that the police should investigate themselves. My understanding of the more recent experiences, particularly vis-à-vis the Northern Ireland situation, is that studies coming out of Britain are now indicating that the opposite is true and that, in fact, the parliamentary investigations are heading in the opposite direction. Is that your experience?

Mr. Skandarajah: I cannot speak to the details of things, but I think the general trend is that the methods that are in place right now are not satisfactory. I think that is what we are dealing with here, that the methods of investigating are not satisfactory, and I think it is generally true to say that the present system is where the force investigates itself. That is not working. Therefore, we are looking to other things.

There have been a few instances in which senior officers from Scotland Yard have been brought up to other jurisdictions to investigate local matters. But it is my belief that even that does not get over the very essence of the problem which Mr. Borovoy has been consistently talking about, a lack of perception; and we just cannot go on ignoring that.

With respect, however sincere and thorough it could be, there is always a nagging doubt; and presently, with the amount of mistrust that exists, we are venturing on something that is bound to fail. That is why I said that, if it is a genuine experiment, we should really be trying the thing that everybody keeps saying does not work. I really do believe it would work.

Mr. Philip: Regarding the recent formation of a citizens' forum group with which your association is connected, along with a number of other very well-known and, I might say, even not conservative but middle-class, not-radical organizations under Mr. Wainberg, would the formation of that kind of organization have been necessary if you people had felt that the changes for an independent police investigation were likely to come about through an amendment in this committee?

Mr. Anthony: When we started the discussion about CIRPA, it was seen simply as an alternative to what is being presented in Bill 68. So at that time at least we would not have thought about it had we been getting in Bill 68 what we thought we should be given. But at the point at which we went into discussing (inaudible), we came to realize that even if the government had given us a (inaudible) commission and so forth, an organization like CIRPA would be necessary if only to make sure that the system keeps on working properly.

Mr. Philip: Its role would have been different.

Mr. Anthony: Certainly. The role would have been to make sure that people were using it, to make sure that it was working

properly. What I think CIRPA will say to you when they came before you is that, even if the government at this point says it is going to accede to at least some of the recommendations we have been made, then a group like CIRPA would still be necessary in the same way that the National Black Coalition of Canada would still function in the manner in which it functions now, to advise people where to go; but, instead of advising them to come to us and then sending them to independent lawyers and so forth, we would be sending them through the (inaudible) that have been set up, doing what they think should be done.

Mr. Philip: So instead of being--I am trying to choose my words moderately--instead of being a radical or quasiradical activist type of group, it would instead take on the form of a facilitating kind of group, assisting people to use the official channels.

One of the things that Mr. McMurtry informs us the police chief will be telling us is that, if we go the independent investigator route, it will have a demoralizing effect and affect the disciplinary systems of the police force. I wonder if you would express your opinion.

Would a group outside, acting in a highly adversary capacity, because they are not having their needs met within the system, not have a greater demoralizing effect, in your opinion, than the kind of system he is talking about?

3:40 p.m.

Mr. Skandarajah: Actually, Sylvester made the very valid point that, if the proposed bill had proved satisfactory to groups like us, the role of CIRPA would have been a supportive role in giving people information, providing voluntary assistance, et cetera.

What is to be noted is that, unfortunately, that is not the way it has worked out. Despite representations made by a large number of community organizations, the government has seen fit to go ahead with this legislation. In fact, what is going to happen is that the way the government has acted, namely, by appointing the complaints commissioner even before the legislation has been put in place, which in itself causes concern and gives a fairly questionable position--

Mr. Philip: This has caused concern in your community?

Mr. Skandarajah: Sure. To me, it is one of the most obvious demonstrations--"You can come and talk until you are blue in the face, but we are going to go ahead with this." I do not see any other interpretation.

I think what is now going to happen is that CIRPA is going to record complaints, give people advice, guide them through the process--probably the alternative processes, namely, civil actions et cetera, which do not have the repercussions of a charge of public mischief--and then the community at large will in time decide where the public has confidence.

Perhaps statistics will bear us out that three years down the road, when it turns out that the complaints commissioner has maybe 3,000 complaints and CIRPA has a record of maybe 7,500 or 6,000, or even 3,025; you can then judge for yourselves what has actually happened in the community.

CIRPA is not trying to do this to destroy a system. It is doing this quite simply because it believes in a better society. The way it can be done is to demonstrate to the public that what is being put in place is a farce.

Mr. Anthony: I do not want to answer for CIRPA; I think CIRPA probably will appear here and will do that itself. The point has to be made, though, that in regard to the question of demoralization and so forth, it is (inaudible), because CIRPA has met with Deputy Chief John Marks, I think is his name, and he has indicated that he would be quite willing to assist CIRPA in the execution of what CIRPA wants to do; in fact, he has offered us some support. CIRPA has even met with Mr. Linden, and he too has declared an interest in working with CIRPA. So CIRPA's intentions are not as sinister as they are made to look.

The question of the independent commissioner is quite important to us. Unless and until the Progressive Conservative government, in spite of its huge majority, comes to understand that not any piece of legislation can deal with the problems we have; unless it can understand that the problems we have here are unique to the city and they may not yet be as exacerbated as they are in other cities--I say quite frankly that I think, as Wilson has said, as Sri has said and, if Jesse had said anything, as he would have said also, that they are real problems, and simply accusing us of not speaking for the community or of not having the intelligence to be able to understand some legislation (inaudible)--some of us could even write better legislation than that--is to beg the question; it does not deal with the real crux of the problem.

Whether or not we are representative of the community will not be important, as long as what we are saying makes sense. I think that is what is important.

Mr. Dillard: My comment is fairly simple. It seems that our position is very clear. We have stated it in the brief; we have reiterated it in answering questions and making comments about our position. The recommendations in our brief are clear. It seems that if the line of questioning is to get us to change our minds, because our research has been done very poorly, that is wrong. We have researched the situation clearly, and we think the recommendations and the statements we have made in our brief give a clear indication as to our position with regard to this bill.

Mr. Elston: A couple of questions I did have have been answered. I wanted to make sure we eliminated the confusion that had emanated originally from the indication that the minority groups in Toronto had a great deal to do with the construction of this particular piece of legislation and only those who had no representative constituency were left to speak against it. I am glad you have clarified that for the committee.

I think we have dealt with that fairly well. But when we look at the process that's before us--we will go away from the question of independent review--do you see any advantages to the system whatsoever? Do you see a possible accommodation for a complainant to get into the system--

Dr. Head: I would not recommend anyone going through it as it is now. As the bill is set up now, I would not recommend a person going to the complaint bureau. I can't see any purpose in doing so. I consider the bill simply a method of keeping the same thing we now have and putting a little bit on top to make it look a little sweeter. But basically it's the same thing; you still go to the police and you still file a complaint with the complaint bureau.

I understand there can be some exceptional circumstances. I do not know what they are. If I were going to say to somebody, "I recommend you go," I would want to know what are the exceptional circumstances and I would say, "By all means go there and avoid going to that police complaint bureau." Unless the commissioner had civilian investigators, I wouldn't go to him either.

Mr. Elston: Just to pick up on that particular point, Dr. Head, no matter who we have as the investigator, would you feel more comfortable if the investigators, whoever they might be, reported directly to the PCC rather than remaining internal? What I am getting at is, could these people not be police investigators whose primary responsibility is to report directly to the PCC?

Dr. Head: These are people who beat people up and really intimidate people. They are people who read the riot act to them. If you do so and so (inaudible) you can be charged et cetera. It's the police who are doing this. My feeling is that you have to have a situation in which there is an independent civilian person to go to. I would not refer a person to a complaint bureau staffed by a policeman, no matter who he reports to.

Mr. Anthony: I think, as Mr. Philip mentioned, with regard to (inaudible), in that there still remains a conflict of what role you are in. When you talk about an independent review board, you are referring to something like the Ontario Human Rights Commission. We may not very much like how it's operating and the (inaudible) with it, but we are speaking of that kind of a body. We are talking about independent investigators and review.

We are not talking about police investigation and independent review after the police investigation. We are not talking about independent police investigation and the possibility of independent review stopped by the chief of police (inaudible) municipal court kind of body. We are talking about independent investigation, review and adjudication.

Mr. Skandarajah: Mr. Elston, if I might go back to something. When the urban alliance organized a coalition to look at the draft bill, I worked with Mr. Ruby and two other lawyers. To simply illustrate a very significant point, we drew a line on a piece of paper, one side for the complainant and on the other side the officer concern. We started listing down rights. I ask you to

look at that bill and start doing the same thing. If you see, under the complainant, anything more than four rights and you compare the number of occasions on which you would recognize clauses as rights on the part of a police officer, it's incredible to expect a community group to go and recommend this bill to anyone.

The point was made earlier by Mr. Anthony that nowhere in this province is any profession afforded the type of protections that this bill gives a police officer about whom a complaint has been made. I think there is a misnomer. I think it is perfectly proper to refer to this bill in short form as a police protection bill. That should answer whether we can honestly and sincerely recommend this procedure to people in our community.

3:50 p.m.

Mr. Philip: So your advice to an MPP in the opposition would be that unless certain concessions are made and certain amendments are made in the bill, notwithstanding the fact that some groups will tell us it at least moves a little bit in the right direction, you would vote against it if you were in my shoes, would you?

Mr. Anthony: I would. That is essentially what we would tell you. Of course, we will also add that, if you were to vote for it, you might not lose your seat anyhow. What we are saying is that it has to be--

Mr. Philip: That is three or four years away. I am not all that concerned about it at this point.

Mr. Anthony: What we are saying in principle is that the Solicitor General has argued before that this bill is a result of the demands made upon him by the various minority communities concerned about police-community relations. What we are saying to you--not to use unparliamentary language--is that this is far from the truth.

Dr. Head: I would like to just indicate that some of us have been meeting with Mr. McMurtry around this point for over a year. We have heard all these arguments before, and he has not been able to convince us. He has even gone so far as to say we ought to compromise. He hasn't offered any compromise, however. He says it's a take-it-or-leave-it situation.

Mr. Elston: Gentlemen, one of the problems I have seen so far in our system as it exists is the fact that people do not feel comfortable going to it. Obviously they feel intimidated one way or another, as you have related.

In the particular legislation we have here now, even if we were able to build in an independent investigation situation, do you think it would be a profitable exercise for us to codify some of the procedures, the means by which the individual complainant goes to make his complaint? For instance, should we require that he be allowed to have legal or companion representation when he goes to the investigation?

Mr. Anthony: Who is that? Is that the police officer?

Mr. Elston: No, this is the complainant. For instance, would it be a good exercise for us to be build in these protections? In other words, I presume what we will be doing is balancing the sheet so that it will become equal.

Mr. Anthony: Do you mean in the absence of an independent investigation?

Mr. Elston: Despite all of that. In order to make a complainant feel at ease with the system, should we codify?

Mr. Dillard: I would say no, simply because that is like saying, instead of going to the gallows via this route, we are going to go the other route. It hasn't changed the water on the beans too much, as far as I can understand.

Dr. Head: As far as I know, they can take a lawyer with them now. I don't think there is anything to stop them.

Mr. Elston: Yes, a lawyer; but in most cases I understand the initial interview with the police officers is done usually one on one, combined with the investigation.

Mr. Anthony: We have been in situations where, for instance, we have had two people complain about the police, or one person complaining and another person witnessing. Usually the other person is also implicated and finds himself charged with interfering with a police officer in the course of his duty and all kinds of things. So even when that person goes in with the person who wants to lay the complaint, that person is implicated and as such is not an independent witness.

As I said, it doesn't matter whether they go as two people, one of the persons or whatever, there is one real problem in that you stand a chance of being charged.

I recall a story in the Toronto Star some time last year or the year before--it might have been last year--where Judge Givens made it clear that the commission was going to begin hitting with some suits because they were getting upset about the charges being made against the police, which doesn't do very much to encourage people to become involved in laying complaints.

Mr. Elston: I have just one other question. That is, would it be of some assistance to prevent the laying of a charge like that? A public mischief charge is really what we are talking about, I presume, in most of the cases where there is a counter charge.

Mr. Skandarajah: I think I should specifically deal with that, and I am sure your minister will listen to my comments with interest. I don't believe, gentlemen, you have the jurisdiction to deal with a Criminal Code charge. This is one of the other reasons why using civilian investigators is crucially important, because if you read the Criminal Code, public mischief means using a peace officer's time wrongly. That is what it means in effect.

A civilian investigator is not a peace officer; so you overcome the problem of dealing with that type of harassment by using civilian investigators, because a public mischief charge can never arise. Therefore, people will not be discouraged from following up with their complaints. That is another very valid reason why this method of investigation is very important.

Mr. Elston: There is one more point to follow on; that is, in our current legislation there is a possibility that the PCC can go in before the 30-day period expires, in exceptional circumstances or because of undue delay. Do you see any merit in changing that particular provision, again isolating the other facets of the bill? Do you see any merit in changing that particular clause to read that he has the ability to go in when he determines it to be in the public interest, much along the lines of the McDonald commission's suggestion to put it in?

Mr. Skandarajah: One of the sections in there--I think it is section 14(3c), but I don't have it in front of me--makes it clear that before the PCC can enter the investigation, as I think I mentioned in the brief, he would have to advise the chief of police of his intention to do so.

Mr. Elston: It's section 14(5).

Mr. Skandarajah: Either the same section or a subsequent subsection then allows for the chief of police to go to Ontario Supreme Court to prevent the commissioner from entering the investigation.

That is our problem. Over and above everything else, what I am saying is that the entire bill is utter nonsense. So we don't want to discuss the little sections like this as if to say some part of it is good. We are saying, even where we are given a situation where the public complaints commissioner can come in and investigate, not only are the conditions under which he can enter so vague as to be ridiculous but also all other situations are set up so that he can be prevented from doing so.

One of the other things is a very human aspect of dealing with this. How does he know whether the public interest is involved? The final gathering of the facts has to be done by a police officer in the mechanism as it exists. So the two things really go hand in hand.

First of all, it must be independent in the sense that the investigation comes within his jurisdiction ab initio, right from the beginning, coupled with the fact that the investigation has to be truly independent in the sense that no police officer, who owes his employment and security of job aspects to some other person, is conducting the investigation.

I think there is some merit to be considered in the suggestion that not only must he be involved at the beginning, but also perhaps he must have his own team of investigators. If they happen to be, as you are suggesting, police officers, when their job security is owed to him and not to the police commission or to the police chief or to his superior officers, if you can start

addressing all those things in what you are trying to suggest, then there is some room to explore.

Mr. Elston: Those are my questions. Thank you.

4 p.m.

Mr. Philip: There is a small matter I wanted to bring up. I am sorry Mr. Breithaupt is not here, because he has had a lot of experience with this committee and would perhaps have some insight, but it seems to me, in the absence of the Solicitor General, that it would be appropriate to have someone in that chair who is able to make political and policy statements.

Mr. MacQuarrie is his parliamentary assistant, and I feel what we have had today is the experience--I am sorry if I exploded at Mr. Hilton; I have never done that before, but at the time when I rebuked him he was making what I considered to be a political statement. That is not the job of a public employee.

I suggest that, whenever the Solicitor General is not present, Mr. MacQuarrie sit in that chair and Mr. Hilton be here to answer questions and to advise Mr. MacQuarrie so that I can at least shoot at a politician rather than at a public employee whom I happen to have a lot of respect for.

Mr. Hilton: Mr. Philip, since I have equal respect for you, having sat with you here in these committees when you were chairman, I do not mind the shot. You can take a shot at me any time you like.

Mr. Philip: I would much rather take a shot at a Conservative politician than at you, and I think you are put in--

Mr. Hennessy: Anybody that walks.

Mr. Philip: The point I am making is that Mr. Hilton is being put in an awkward situation. He should not be making those statements. It should be--

Mr. Hennessy: Mr. Hilton is not complaining. You are.

Mr. Philip: I am complaining because I happen to have a lot of respect for the parliamentary system and the way in which it operates.

Mr. Hennessy: You have a lot of respect for him all right.

Mr. Philip: I realize you do not understand very much about that system--

Mr. Hennessy: That is right. When it comes to you, I do not.

Mr. Philip: --but I would hope the other members, including Mr. MacQuarrie, would understand the point I am making, and perhaps he can occupy that chair in future.

Mr. Chairman: Mr. Philip, I know in question period, if you want to draw an analogy, the parliamentary assistant cannot answer a question without the minister's permission and approval, but the minister is not here. I do not think today Mr. MacQuarrie could step forward and occupy the chair.

Mr. Philip: In past proceedings of this committee, in fact, the parliamentary assistant to the Attorney General--who happens to be the same person, and that is why we often confuse them--has often occupied that chair. Certainly Mr. Rotenberg, the parliamentary assistant to the Minister of Intergovernmental Affairs, in the past often occupied the chair.

It is quite appropriate for the parliamentary assistant to answer questions--much more appropriate when it comes to policy statements or questions of policy--than it is for a public employee, whose job is to advise and simply give facts.

Mr. Chairman: But you will concur, that is with the minister's direction and approval. Is that correct?

Mr. MacQuarrie: Mr. Chairman, we can discuss this with the minister and possibly make arrangements to accommodate Mr. Philip.

Mr. Hilton: I have no objection at all. As a matter of fact, I would find it very much easier if that were so, Mr. Philip. I was asked by the minister to sit in for him and, if I made an expression that you interpreted as political, it was an effort by me to interpret for you that which I understand to be his position on the matter.

Mr. Chairman: Thank you. Mr. MacQuarrie, you are next.

Mr. MacQuarrie: One or two brief questions. First, I take it you gentlemen are fully familiar with the status quo as it exists with respect to police complaints: the police complaints bureau, the police commission and the Ontario Police Commission in that order, depending on the disposition made of the complaints. I take it also from your earlier statements that you were not entirely satisfied with it. If I understand correctly, you also feel the new bill is no improvement over that situation. Am I correct in that conclusion?

Mr. Anthony: Yes, you are.

Mr. MacQuarrie: So you would prefer the status quo, all things being equal?

Mr. Skandarajah: No, not at all.

Mr. Anthony: What we would prefer is a better bill.

Mr. MacQuarrie: Do you think the new bill, introducing as it does a new player, the public complaints commissioner, is an improvement over the status quo?

Mr. Skandarajah: I personally do not think there is an

improvement, because under the status quo the officer complained about has fewer rights. If anything, this bill prevents a just finding, because admissions made by an officer cannot be produced in evidence in other proceedings other than the complaints proceedings, whereas the existing system does not prevent that. Therefore, I come to the conclusion very logically that what is there now is better than what is being proposed.

Mr. MacQuarrie: It all depends on the manner in which the officer's statements were obtained, whether they were verbal statements made to the hearing before the chief of police in a disciplinary hearing and not taken down in writing or anything. It is sometimes it is hard to corroborate those in subsequent proceedings.

The thing here is we have an experimental bill, with a three-year time limit. We have also introduced a new player, the public complaints commissioner, new aspects of dealing with the police complaints. The bill has, as I understand it, been prepared with a lot of consultation and a lot of study to improve upon the status quo. But you people and your coalition have already indicated that it is no improvement on the status quo.

Mr. Anthony: I would hope, by the time these sessions are completed, that you will be able to satisfy yourself as to the question of whether in fact numerous groups were involved in the drafting of this legislation. I would hope that as of today you probably have some sense, from the groups who have appeared before you, whether they were involved in that legislation or whether they had approved that legislation.

If the answer to that is, well, the only groups who are appearing now are those that did not appear then, it might be useful for you to request those who did appear then and concurred to appear, because I think we have said in uncertain terms--and I think other groups that will appear before you will tell you also--that none of the minority groups we know of, either by our government in them or with them, has approved the legislation before you. None except, of course, I should say, the police association and the police commission. That should tell you something.

Mr. MacQuarrie: The comment was made this morning that none of the visible minority groups, in respect of the bill, were appearing to oppose it. But ordinarily, supporters of bills are not the ones lining up at the door to come in, you know, although in principle they support the bill. The silent majority of some of these visible minorities might well have no opinion on the bill or might be in favour of the bill. How do we know? The thing was advertised.

Mr. Anthony: I think the point has to be made that this bill is not just another bill. It is not an ordinary bill in the sense that the government passes a whole bunch of legislation. It is a piece of legislation which the minister has argued was influenced by the demands made by the visible minority community groups.

This is not just another resolution of the government. There have been four attempts; one, I think, by the Liberal Party or a member of the Liberal Party, and three others, including this one by the government. I think they were Bills 201, 47 and 68. There was a private member's bill before that.

4:10 p.m.

This is not just any other piece of legislation like an environment act or anything else. It is a piece of legislation which the minister has argued was being asked for by minority communities. It should be important in your consideration of the legislation as to whether minority communities support the bill because, if their rationale for bringing in the bill is that they are asking for it, you have something and they are saying, "Hey, we do not want it," it is useless to put it there.

Mr. MacQuarrie: To my mind the objections narrow down to one basic one, and that is the initial investigative process, the independence of that. But, putting it in a broader perspective or broader context, we have the status quo, we have the bill that has come forward, a bill which, to my mind, has many safeguards in it for the complainant.

Dr. Head: For the police.

Mr. MacQuarrie: Some for the police. But do not forget the policeman's job is on the line.

Mr. Anthony: With all due respect, I do not think it is our responsibility to ask the questions but it might be useful if you could advise us as to some of the rights that are provided for complainants in that bill, because we have not seen any. I will be quite frank with you. We have not seen any.

Mr. MacQuarrie: First of all, it was mentioned earlier that the potential complainant was afraid or reluctant to go to a police station to launch a complaint. Under the bill he does not have to go to a police station. He goes to the PCC. He can submit his complaint either in writing or in person. The minute the PCC is seized of the matter he gets the complaint over to the appropriate officers in the police department.

As one who has been connected with the police department through the years as a member of a police commission, when I looked at the bill initially, I felt, why do they need this bill? But then, recognizing that Metro Toronto is far different from other areas of the province, with a lot larger police force, a lot larger population and a lot more heterogeneous population, there could well be problems and there could well be the need for a separate police complaints bureau.

I thought, in looking over the bill, that it had an awful lot of positive features. I did not think that it had as many weaknesses as you people seem to underline and want to point out. Going back to the main area of controversy, and that is the area involving the initial investigative process and the independence of those carrying it out, the studies that have been carried out

indicated it would be better for all concerned to have the police carry it out, being monitored from day one by the PCC.

Mr. Anthony: With all due respect, this is not what this bill does. What this bill does, at least our reading of it--I should say that it was interesting in reply to my question that you were able to indicate only one that you seem to think is a positive aspect of the bill. I might suggest that, even under the present system, you can lay complaints in writing. You can do it. Whether they attend to it is something else.

With regard to the present bill, the present bill allows for the laying of complaints with whoever, the public complaints commissioner, the police station or whatever. But the involvement of the PCC comes in two areas: one, either after he has received the interim report, which we suggest is a report written by the investigating police officer, or, secondly, under what I think is referred to as extreme circumstances or extraordinary circumstances, and we do not know what these are.

But what we are saying, more than that, is that even if you provide for those situations, which we are saying is insufficient, there is also a third subsection of that particular section, which allows the chief of police to stop his investigation--not to stop the investigation, but to prevent him from entering the investigation. What is the purpose of even allowing him to enter if you are putting in a section where he can be stopped?

Mr. MacQuarrie: Ordinarily he can't be stopped unless he is clearly exceeding his authority.

Dr. Head: Can I just speak to this? I think the gentleman just doesn't have any appreciation, or certainly an adequate appreciation, of the feeling against the police investigation here.

We have made the point over and over again that the people do not trust--on the basis of experience; not on the basis of abstract thinking, not on the basis of reading other studies, not on the basis of what they do in Chicago, but on the basis of what they have found in Toronto.

First, people do not believe the police would give them a fair investigation and, second, people have had the experience of having a policeman say to them, "If you complain, you are going to be in real trouble." A lot more has happened, but I don't want to go into all the details at this point.

The important point for you to recognize, sir, is that people do not trust the police to investigate them; it is that simple. You may think it is great, you may think they are honourable men et cetera, but that is not the way they are perceived in the communities we represent.

Mr. MacQuarrie: It is a question of perception.

Dr. Head: Based on experience.

Mr. Skandarajah: Mr. Chairman, could I respond to the parliamentary assistant on this matter? I was very sad to sit and listen to what he had to say of finding out about the bill. To me, again, this is one of the primary problems.

Metropolitan Toronto has recognized for years--and if you have to go back, you can even go back to Mr. Maloney--that the system had to be revamped. That has been known for seven years, and I am very sad to hear the parliamentary assistant say that it was only when he saw the bill that he initially thought it was not necessary et cetera. Again, it is the lack of knowledge and understanding of what the community really needs.

I had the opportunity to sit and listen to Mr. Linden, who is now going to be the complaints commissioner, before he was appointed as this commissioner, defending the draft bill before the city of Toronto neighbourhoods committee, I believe. The question was asked very pointedly of him, which minority community did he have any consultations with? I regret to say the answer was, "None." I wish to state that to you, because it is a very crucial point and, I think, somewhat contrary to the information that you may have received from the ministry. The answer was, "None."

Mr. Linden was involved in going to various jurisdictions, the United Kingdom and the United States, to look at various jurisdictions in which complaints procedures existed, and by his own admission he did not look at all jurisdictions. We talk about Chicago because we know of that, but again it must be pointed out to you that the information and the conclusions he came to were not based on an analysis of all jurisdictions. He was only to look at many, but not all.

Again, one has to accept that limitation exists, but it is important, and I think I heard from Mr. Philip that the impression that has been given is that this bill has been drafted where minority communities have had a substantial input. I beg to say no. Mr. Linden, on his own admission, in defending this bill before this particular neighbourhoods committee at city hall, admitted no consultations, and I can say this without contradiction. No black community was consulted. Taking that in the context that everybody moans about the black community being the only one that is consistently complaining about this, that is a significant error.

Mr. Hilton: I think, sir, you said that you had talked to Mr. Linden about this?

Mr. Skandarajah: No. I was present when Mr. Linden made submissions to the neighbourhoods committee at city hall defending this legislation.

4:20 p.m.

Mr. Wrye: That was in May, was it not? I think what the deputy minister is getting at is, was that after Bill 68 was presented to the Legislature?

Mr. Skandarajah: After it was drafted and was available in print, yes, but before his appointment.

Mr. MacQuarrie: Is the new bill, as drafted, preferable to the status quo?

Mr. Skandarajah: I think I gave a very unequivocal answer, sir, with deference, that the present thing is better than what you are proposing, because what you are proposing clearly, by its greater bias, is going to prevent justice.

Mr. MacQuarrie: So you would prefer the status quo.

Mr. Hilton: Did he have discussion with you and Mr. Anthony?

Mr. Anthony: Oh yes, a very interesting one, where Mr. Ritchie indicated to us that he was not particularly concerned about the legal implications of appointing a public complaints commissioner before the bill went through.

Mr. Hilton: But he was drafting the bill.

Mr. Anthony: We know that. He advised us of that.

Mr. Skandarajah: Is there a dispute as to the fact that Mr. Linden was part of the fact-finding group as to the complaints procedures in various jurisdictions?

Mr. Hilton: He was part of the fact-finding group; quite right.

Mr. Skandarajah: In which case I would accept--

Mr. Hilton: He was only a part of it, and Mr. Ritchie was also.

Mr. Skandarajah: Sure. But that does not take away from the fact that he indicated he had had no occasion to talk with any group to get an input from a group as to the content of this legislation.

Mr. Chairman: Gentlemen, we have five and a half minutes left. Mr. Wrye is the last speaker.

Mr. Wrye: Thank you--which means I have five and a half minutes.

Before I ask a couple of questions, I just want to say very briefly that I was glad to hear what Mr. Philip said about having perhaps Mr. MacQuarrie sit in that chair, because I shared his sense of unease at having a public servant, any public servant, defend a bill that has aroused the kind of controversy we have seen in the past couple of days. I hope, Mr. MacQuarrie, you will take the concerns we have expressed to the minister, and perhaps that system would work a little better.

I am also drawn by your comments that the silent majority

has not spoken up on the bill. I notice not only are they not on the list of those appearing before the committee but also they have been very silent in terms of newspapers, radio stations and television stations. That kind of bothers me, that we do not have one visible minority supporting the procedure that is now in the bill, particularly since it is supposed to be a pilot project.

In the time remaining I just want to go over with you gentlemen one more time what you would perceive--because this is a central issue--what would be acceptable to the minority groups, in your opinion, in terms of an independent investigation. You must be aware that on the other side of the matter the police have concerns that the investigation be fair from their point of view, too, that the independent investigation be truly independent and not an anti-police investigation.

First, I presume it should come under the police complaints commissioner; I guess that goes without saying, that the PCC and nobody within the force should have control of the investigators.

Mr. Skandarajah: That is correct.

Mr. Anthony: That is correct.

Mr. Wrye: That is number one.

Do you have any problems if, let's say, to use an extreme, the whole investigation force were to be made up of former police officers of one kind or another, say from Montreal, Halifax, Toronto or Windsor, which I represent? Would that be a problem? These people have competent investigative backgrounds.

Mr. Skandarajah: Mr. Wrye, when we refer to civilian investigators, we should not be read as saying that we will not accept any form of policeman. The fact that he is not a policeman at the time he is employed as an investigator is what is crucial.

Mr. Wrye: And that is the only matter.

Mr. Skandarajah: That is where the questions of loyalties and the appearance of coverups and all those sorts of thing come to the surface. As to what he had done in his past, what is important is the skills and the fact that he is independent and does not have to worry about where his next loaf of bread or his next meal comes from. That is the important aspect.

We have no problem with the fact that 100 per cent of them may have been policemen for 15 years.

Mr. Wrye: I ask that, because yesterday we had the police association here and in questioning from us, while perhaps Mr. Walter stopped short, he did indicate that the police were most interested in having the investigators be competent, qualified investigators. He did not say in having them be police; he said in being competent and qualified. Those were the criteria.

Mr. Skandarajah: I cannot overemphasize the fact that, although we appear to be protesting this bill, uppermost in our

minds is justice; everything that is afforded to accused and the complainant, so long as it produces justice, is acceptable. We should not be perceived as trying to destroy a system as anarchists and lawbreakers. It is sad that that type of image is being created.

Dr. Head: We believe that the reason the police don't want the civilian investigator is that they do not want justice; they want to be protected as they have been in the past. This is what somebody said the bill does.

Mr. Skandarajah: With regard to the question. What we are interested in also is to (inaudible) the rest of the police officers. What we are suggesting to you is to have what we call independent civilian investigators, meaning police officers not employed as such at the time. What it does is remove the possibility of officers thinking that the officers investigating them have something against them, have an axe to grind against them.

I think it is also fair to the police if they have other than police officers investigating them, because it removes the potential of inter-rivalry and those kinds of situations. The setting up of an independent investigation maintains the trust of the person complaining and deals with the questions of the police concerns.

In this brief we certainly did not outline what we thought should be other aspects of the bill that have to do with the police. What we are saying is not that police should not be protected but that they should not be protected to the extent to which they are protected in this bill, ignoring the concerns of the complainant.

We are not saying the police should not have any protection. We are all for protection for the police and, if you would want us to come back and (inaudible), we will do that. We hope not, though. But we would certainly support protection of the police, but not to the extent that is presently in this bill.

Mr. Wrye: I am drawn by a comment made by McDonald on pages 977 and 978, in which he states:

"We have two concerns, however, which lead us to suggest that in special circumstances it may be advisable to have the office of the inspector of police practices"--their PCC--"investigate allegations of misconduct."

In the second one he says:

"Our second concern is that in some situations where there is tension or distrust between the RCMP and the community they serve, complainants or witnesses may not lend their complete co-operation to the investigators. Without such co-operation, the quality of the investigation will be poor and, consequently, the complaint will not be satisfactorily resolved."

Would it be a fair comment that we could draw that analogy

to the problems we face here in Metropolitan Toronto without an independent investigator? Would that be a fair comment of what may happen?

Mr. Skandarajah: I think it is a fair summary of what could happen. What we are also saying is that, given what has taken place--and we go back to references of support we have drawn from reports that are six or seven years old--there is a lot of water that has flowed between 1975 and 1981.

Mr. Wrye: But this is a fresh report.

Mr. Skandarajah: Exactly; and that is a truer perception of what we are dealing with in Metropolitan Toronto.

Mr. Anthony: It goes a little further than that. I think it also suggests, as I think was mentioned in the brief, that if there is that kind of trust and co-operation it will further assist the police in doing their duties.

Mr. Wrye: That is right.

Mr. Anthony: Because without the support of the community, the police could not possibly expect to operate efficiently and properly without people lodging complaints with them or giving them the information they require to do their work.

Mr. Wrye: Thank you very much.

Mr. Chairman: Thank you, Mr. Wrye.

It is now 4:30. Thank you very much, gentlemen, for coming. We are adjourned for today until 10 o'clock tomorrow morning.

Gentlemen on the committee, will you please try to be here at 10 o'clock? We have two sets of witnesses tomorrow morning.

The committee adjourned at 4:30 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT

THURSDAY, SEPTEMBER 24, 1981

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Piché, R. L. (Cochrane North PC)
Wrye, W. M. (Windsor-Sandwich L)

Substitution:

Hennessy, M. (Fort William PC) for Mr. Andrewes

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister
Ritchie, J. M., Director, Office of Legal Services

Witnesses:

Sparrow, A., Chairman, Procedure Committee, Citizens' Independent
Review of Police Activities

From the Quaker Committee on Jails and Justice:

Cook, S., Member
Franklin, F., Member

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, September 24, 1981

The committee met at 10:08 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Toronto Police Force.

Mr. Chairman: Gentlemen, a quorum is in place.

Mr. Philip: Mr. Chairman, if I may, yesterday in this city we experienced the tragic loss of one of our police officers, Constable Percy Cummins, who was unfortunately killed in a nasty incident in the serving of his duties as an officer.

This being the justice committee, and this being the committee that is dealing with the police bill, I wonder if we could ask the clerk of our committee to send our deepest sympathy and regrets to the family of Officer Cummins on their loss in his execution of his duties as a police officer in Metropolitan Toronto.

Mr. Chairman: Does the committee concur with that?

Mr. Hennessy: Yes, I have to agree with that. It was very unfortunate this did happen, and I think this makes this committee's job a little more difficult, as far as I am concerned.

Mr. Chairman: The clerk will so do. Thank you.

Ms. Cook, and Mr. Franklin, would you come forward please? These people are members of the Quaker Committee on Jails and Justice, appearing before us today. Who will be the spokesman?

Mr. Franklin: Both of us.

Mr. Chairman: Fine. Thank you. Who wishes to commence?

Mr. Franklin: May I start?

I appear on behalf of the Quaker Committee on Jails and Justice, and we appreciate the opportunity to speak to you today. I would like to introduce who we are and where we come from when we talk about Bill 68.

We are members of a committee of the Society of Friends, and the Quakers have, throughout their history, been interested in jails and justice. Perhaps the most famous was Elizabeth Fry, known to all of us, who attempted to improve conditions in British jails in the nineteenth century.

Since then Quakers have given a lot of thought and energy and are beginning to turn from concern with reforming prisons to concern for their virtual abolition, and for their replacement with new, nonpunitive and human recreative responses to crime. We have come to the conclusion, together with many forward looking people in the justice field, that the present system, as it is constituted today, is unreformable.

This particular committee was formed in 1974 in this area by a group of friends disturbed by injustices they saw through their work in the courts and prisons. We have three subcommittees, on education, political action and direct action, which gives some idea of the scope of our work.

Since 1976 we have run programs in several jails in the area regularly; the Don Jail, Milton, Mimico. At the moment we have a program in the Don Jail, and the Toronto West Detention Centre, and through these programs we are in touch with prisoners all the time, with their families, and through our other work, with members of all the other voluntary agencies which work with prisoners; for instance, John Howard, Elizabeth Fry, and lately the bail project, and many, many others.

10:10 a.m.

From our experience in the jails, talking to prisoners, and shared experience with all these volunteer workers with prisoners, it is quite evident that to those arrested and in jail the police represent a major threat: rightly or wrongly, it does. Many prisoners say they have been beaten by police to extract confessions, et cetera, and these reports are on the increase, both to us in the jails and as reported by these various agencies.

In our experience, and one of the reasons for our struggling, as soon as a person is arrested, often he or she is subjected to arbitrary and rough treatment at the police station and further into the system. We have to remind ourselves that this rough treatment occurs before the accused have had their day in court and may turn out to be innocent.

This kind of treatment is also immediately transferred to the accused person's family when they visit or try to bail him or her out, or anyone else trying to help the accused or the prisoner, and many of us ourselves have found this; immediately one wakes, one is treated as a second-class person.

With this picture I think it is quite inconceivable for any of these, our clients, to launch a complaint about rough or arbitrary treatment under the provisions of Bill 68. The procedures outlined in that bill must appear to them like a cruel joke. The police retain the advantages and protection they have always had and this is now enshrined in law.

Other submissions which have been made before this board in which we have had a part have criticized the bill in detail, have criticized the way the board is chosen, the composition of it and that the police still investigate themselves first, and, in fact, looking at it again it looks to us as if the whole procedure still

takes place in a police setting--it still does--and not on mutual grounds where all parties feel equally protected, and this to us would be the only way that a complaints procedure could function properly.

We, therefore, agree with the submission that we must oppose this bill as it is constituted, that it would be better if things were left as they were before, as if this bill had never been passed. We find it quite unacceptable in its general conception and the way it is supposed to function.

A last thought on this is that this legislation projects an image of the police that seems to require the protection of a law, such as this bill, because their practices would not stand the scrutiny of an open and impartial process. This does not only do injustice to the many law enforcement officers who try to discharge their jobs decently and fairly, but it can become a self-fulfilling prophesy by shielding the brutal elements that any paramilitary force, such as the police force, naturally contain.

That is my submission. Sonny Cook, who is a member of our committee and has had direct experience of some of the things I have talked about would like to speak to you for 15 minutes, or probably less than that.

Ms. Cook: Mr. Chairman, my background is as a nurse, an RN, reality therapist and life skills coach. I am a member of the Toronto Justice Council and a volunteer with the Quaker Committee on Jails and Justice. With that committee I ran a weekly life skills program at the Don Jail for a year and a half.

Recently, I was a bail supervisor with the Metropolitan Toronto bail program. As a bail supervisor, I found the police were generally very courteous and helpful, and in some cases just genuinely concerned with my young clients. I was a youth worker at the bail program.

On the other hand, from my young clients were very frequent reports of what I could only call police brutality. I regret to say that I found them all too credible. I would discount as much as I could, but they were just too credible.

I was never able to persuade even one single person to make a complaint through the channels that then existed, and I understood very well why they would not because I certainly would not have either. No way. They were afraid of recrimination, and I would have been too.

If I had made any waves about the violence that was happening to my young clients, I would have lost my credibility with the police, and my ability to work and get what I needed for my kids. In order to keep them out of the Don, I had to relate with the police continually, and work with the kids until they were established in some kind of a program.

While I was at the bail program, one night at 11 o'clock one of my young clients turned up at my house. I gave all my clients my telephone number and my address, and almost none of them have

used it. At 11 o'clock one night, a young man turned up shaking, pale and hardly able to calm his fears.

He said he had had a mild beating--these were his words--mild beating from the police. They had taken him into an alley. They wanted him to tell what his friends were doing. He said he did not know anything and that he was clean, and they said "Well, we will soon change that," implying that if he did not come clean they would plant a charge on him.

He came over to my house and stayed for about an hour. It was a difficult situation because he was then over his curfew and could have been picked up for that.

In a city where 42 per cent of the Metro budget goes to the police, I find myself not entirely happy to make this submission. It puts me and my future clients in jeopardy, I feel. Were I still with the bail program I would not do it, because I would feel I would be jeopardizing my ability to work with the police around my clients.

I feel an objective and independent police review board could only benefit the police by bringing the police forces up to the highest standard of integrity and the highest level, which I saw from many police officers, of courtesy, efficiency and solid dependability which is the badge of the London bobby, as you know. I think an independent police review board could bring our police forces up to that standard.

I feel that an independent police review board would raise the public respect for the police forces. When these horror tales leak out, as they occasionally do, the public would know that they are being fairly and objectively investigated instead of, as everybody suspects, being swept under the rug.

I believe an independent police review board would reduce the public fear of the police. The members of the minority groups know they are living in a police state where the police are all powerful and can effectively silence opposition of any kind. If you are a member of a minority group, you know that.

If you are a member of a more privileged group, you know your privilege is going to protect you. Therefore, I believe an independent police review board would reduce the double standard that exists.

10:20 a.m.

I would like to tell you about a little incident that happened. Some years ago I was working as a life skills coach at Georgian College in Orillia and half of my students were native people. In order to get to know them better, I was seeing a young man who was the editor of the native newspaper. I had suggested to him that we go for a cheese and wine picnic.

It was fall, a lovely Indian summer day. He went down and he bought a bottle of wine. He said, "Do you mind if we get busted?" I said, "What do you mean, get busted?" He said, "You know, an

Indian drinking a bottle of wine is going to get busted."

What did we do? We took our bottle of wine and our cheese and went over to the Rama reserve where we knew we would be safe. That double standard had not even occurred to me. It was his bottom line knowledge of where he stood in society.

That is my submission. Thank you very much.

Mr. Chairman: Thank you very much, Ms. Cook.

Mr. Hilton: I would like to thank these good people for their sincere observations.

Mr. Philip: Is it the intention of the Solicitor General (Mr. McMurtry) to have his parliamentary assistant in the chair today, since the Solicitor General obviously, for whatever reason, cannot be present at the hearings again?

Mr. Hilton: May I respond to that?

Mr. Chairman: Yes, go ahead, Mr. Hilton.

Mr. Hilton: The matter raised by yourself yesterday, Mr. Philip, was discussed with the Solicitor General last night and again this morning. He wished me to advise the committee that he regrets his absence.

As you all know, the Supreme Court of Canada is coming down with its decision at the first of the week, and in relation to that, a nationwide ministers' conference was called for later next week in St. John's, Newfoundland, which he must attend and at which he must have Ontario's position securely in place in relation to that judgement, whatever it may be. He and others--indeed that's where I found him this morning--are at a meeting in preparation for that.

He asked me to advise the committee that he is well aware of all the submissions that are being made and all the discussions and questions that are being asked. He has ordered Hansard and is following it. He is reading the briefs that have been submitted.

He asked me to further advise the committee that he, as he said at his opening, will be present with the committee when the committee is having its discussions after the briefs are submitted. As far as matters involving the act and its development are concerned, he thought perhaps my longer involvement with the matter than Mr. MacQuarrie's might make my responses more pertinent. As far as any policy matters that might arise are concerned, Mr. MacQuarrie would be to able deal with those from his seat. Accordingly, he has asked us to carry on as he originally instructed.

Mr. Philip: I don't want to prolong the debate, but I am glad Mr. Breithaupt is here because I am sure he will have some comments on this--not having been here yesterday, but knowing full well the very strong views that were expressed by his colleague, the former member for St. George, on the whole matter of

responsibility for having somebody who can talk on policy in the minister's chair.

In the absence of the minister and in keeping with my sense of how Parliament works, I think Mr. MacQuarrie should be in the chair beside the chairman responding on behalf of the government rather than have a public employee put in the awkward position of perhaps having to deal with policies.

If that's not the wish of the minister, rather than delay questioning on very interesting briefs, I would simply make the point and leave it at that, but it offends my sense of how Parliament should work.

Mr. Hilton: I might say, Mr. Philip, when you were in the centre, I sat beside you through a very lengthy debate in relation to--

Mr. Philip: The family law bill.

Mr. Hilton: No, the bill involving trade with Israel.

Mr. Philip: On that very occasion though, there was no parliamentary assistant who could be present and it was made perfectly clear that you were not in a position to answer any policy questions.

Mr. Hilton: I make that clear today too.

Mr. Chairman: Correct, and, Mr. Philip, I think it's obvious there is a parliamentary assistant here.

Mr. Philip: We do have a parliamentary assistant here and I believe his place is in the minister's chair.

Mr. Chairman: The chair is going to rule that there is no difference between chairs in the room. They each have microphones and Mr. MacQuarrie can answer from where he is sitting in the event that a question becomes political.

If you wish to make a motion that Mr. Hilton move to a different chair in the room, that would be in order. Otherwise, shall we go on to the next speaker?

Mr. Philip: In the light of the fact that we have five votes, maybe I will make the motion.

Mr. Piché: You have two votes. He is not calling the shots for you, I hope.

Mr. Philip: I know the very strong respect that Mr. Breithaupt has for the parliamentary assistant and I'm sure he will agree with me, that's all. It will be a tied vote so there will be no purpose in my moving the motion. I made my views clear.

Mr. Chairman: Mr. Williams did catch my eye. Would you defer to Mr. Breithaupt?

Mr. Breithaupt: I was just going to say on that point, Mr. Chairman, I think it's quite clear that the committee would expect to have the minister present when we deal with a clause by clause situation, and I would obviously presume that the minister will be available. On any occasion he was not available, when we are going through the bill on a clause-by-clause circumstance, then it would be appropriate, of course, for the parliamentary assistant to attend on his behalf.

I think while we are hearing delegations at this point there can be a variety of questions, but it may be that policy isn't going to really emerge until all the delegations have been heard. So I am not too worried about Mr. MacQuarrie sitting where he is. If he feels moved to comment on policy matters or wishes the Solicitor General to do that in due course, that will be up to him, as long as we know that the Solicitor General will be present for the clause by clause discussion that will pull the whole thing together.

Mr. MacQuarrie: As has already been indicated, Mr. Breithaupt, he will be here.

Mr. Philip: If Margaret runs for us next time, you will know what happened.

Mr. Williams: Mr. Franklin, first, the work of the Quaker society in the courts is well known and well respected and as a committee we certainly commend you for your ongoing work with the prisoners and the rehabilitative work you are doing with them. I can well understand because of this direct and heavy involvement that you have a particular awareness of their needs and concerns. I understand what you and Ms. Cook have said with regard to the frustrations of prisoners expressing to you in confidence alleged mishandling by the police authorities.

There are two concerns I have. One you expressed, Mr. Franklin, assuming that on occasion there has been excessive force used on prisoners and so forth. Assuming that to be the case, and I think on occasion it has occurred in the past and could well occur in the future, what I find difficult to understand is why you feel it would be better to leave the system as is rather than to have this investigative form and procedure set up under this legislation.

I don't understand why you feel it's better to do nothing than to move forward in a positive way, notwithstanding the fact that the mechanics of it don't totally meet what you feel to be appropriate.

10:30 a.m.

Mr. Franklin: I appreciate your question. Looking at the summary of the bill yesterday again, I am quite astonished that that process is put forward as something viable at all where we come from. This investigation is totally in a police orbit. It talks about the chief of police establishing and maintaining. It talks about a person in charge of the bureau--who is not defined, from what I have read--who has great powers of discretion and can

scuttle the whole thing right at the beginning. The whole concept of this bill, as I have read from the summary, seems to be--

Mr. Williams: Frankly, I don't understand how you come to the conclusion that it's completely within the orbit of the police department. I think the bill clearly points out that an independence will be established. I agree that the degree of independence is at issue, but nevertheless there is an independence created that hasn't heretofore existed without the proposed legislation.

In regard to the public complaints commissioner, Mr. Linden, who has already been chosen, surely you can't say to this committee that he is clearly within the orbit of the police and under their point of view exclusively.

In regard to these people who would be appointed to the police complaints board, while one third of them may be on the recommendation of the police authorities, the other two thirds are still appointed from other directions and have no apparent connection with the law enforcement agencies. That surely would be bringing to the board a degree of independent thinking without bias. I can't accept the conclusions you are drawing unless you can be more specific as to why you feel the whole thing is totally irrelevant and wholly within the orbit of police control.

Mr. Franklin: From what I can see, the description of the bill or how it functions definitely seems to spell out police orbit to me. The composition of this board again does not seem to respond to the kind of popular request that came up at the time of the various bathhouse raids, or whatever the various incidents, of a truly representative board to arbitrate disputes.

The one third of people with legal training is quite undefined. It is clear that the third chosen by police association and police commission have one side. The others are Metro council appointees, and again Metro is not an appointed body and does not necessarily represent the clients, some of the minorities or whatever, who are part of the dispute. So the board composition doesn't seem to answer to the criteria of a truly neutral and independent board.

Mr. Williams: I wonder if we could pursue this just a little further, because we are finding in the hearings to date that there is a lot of misunderstanding as to the type of representation that will make up this board. It came out in evidence yesterday and again it's apparent here this morning.

I don't want to be argumentative, but in my reading of section 4--you suggest it is unclear what it means as to those who will be appointed as have training in law--I can't assume it would be anyone other than someone who has been called to the bar.

But maybe you are right; maybe it goes beyond that to someone who has taken training in a course at a community college, or something in the field of law. They might not be a fullfledged lawyer, but I would think it would surely be beneficial for

someone like that, who has the awareness of how the court procedure works, to be involved.

But I don't know how you could come to the conclusion that they would, necessarily, automatically be supportive of the police position; that because of an appointment by the law enforcement agencies, the Metropolitan Toronto police commission, they would automatically be on the side of the police officer who is being complained against. I cannot accept that is automatically going to happen simply because they may be appointed from that sector.

The council of the municipality of Metropolitan Toronto is made up of a mosaic of elected people from the inner city and the suburban areas. Collectively they will select citizens at large who, as I suggested yesterday, will represent a broad cross-section of the community and surely will bring an objective, unbiased position to their responsibilities.

I am really puzzled that you should have such apprehension and feel, almost conclusively, that the whole thing is weighted at the outset in favour of the police because of the makeup of the board.

Mr. Franklin: But that conclusion comes to me just looking at some--

Mr. Williams: Obviously it is a perception that you have, but I find it hard to draw that conclusion, that's all. I respect your view, but I am just trying to get at why you come to it when the section seems to provide for a balance here and not a weighting at all.

Ms. Cook, did you have some thoughts on it?

Ms. Cook: I think the difficulty lies in the words "appoint" or "recommend." A person who is appointed has a vested interest, presumably, in remaining in the position to which they have been appointed.

Mr. Williams: This came up yesterday when the National Black Coalition of Canada was here. They suggested that the citizen appointees be elected at large.

Traditionally here in Ontario, many of these people who serve on boards and committees, and even our judiciary, are appointed. Surely you cannot say that someone who sits on a planning board or a library board, and is appointed by the elected people at large, has some vested interest because they were appointed rather than going through the electoral process.

Mr. Philip: Oh, come on.

Ms. Cook: I believe it is impossible to understand a particular point of view unless you have been there. I do not believe that any of us sitting here--perhaps Fred and I have been close to some of the grass roots which we are trying to represent--but I do not believe that any of us sitting here have ever had the kind of experiences which would bring a person to go

to the police review board. Until we have had those experiences, I do not know how we can arbitrate fairly.

Mr. Williams: But is that not justification for saying, "Give this bill a chance; let's see if it will work," rather than saying we don't want anything to change if it has to be structured this way? Isn't that a negative approach?

10:40 a.m.

Ms. Cook: What I believe Fred is saying about this bill is that the government is saying: "Look, we have done something. Now everybody shut up and we will see how it works. In the meantime, the status quo continues." I agree with you that appointment and recommendation may not produce poor results, but my feeling is that until there is a totally independent and probably elected review board, the real situation is not going to be looked at, it is going to be swept under the rug.

I admire the police very much and I have had wonderful dealings with some police officers. I could not speak more highly of them. But I have also been threatened by police officers in my work and I would like to see the police forces brought up to the standard of the gentlemen that I have dealt with around my kids. I cannot see how that is going to happen when vested interests--I say vested interest because appointment, recommendation, all that is coming from where we are coming from; it is not coming from the grass roots, from the minority groups.

Mr. Williams: I just had one more question, if I might, Mr. Chairman. Ms. Cook, I do admire your courage in coming before the committee because, as you say, it could prejudice your ongoing dealings with the police.

Ms. Cook: It certainly could. I just applied for a (inaudible) job with the board of education, so I am definitely--

Mr. Williams: We appreciate your coming forward under difficult circumstances. Part of that difficulty, as you explained to us, was the fact that after prisoners had complained to you--feeling they could complain only to you and no one else--I think you indicated to the committee that you felt, in turn, that it could prejudice your position and your clients', if I can use that term, if you, on their behalf, went to the police to inquire about a complaint that had been lodged.

Have there been any occasions in less serious situations, or even in the serious situations, where you felt you just had to go to the police to determine whether the allegations that had been laid against the police by that prisoner could in fact be verified and borne out?

For instance, several years ago I think one of the Toronto newspapers conducted a great exposé about police brutality. They ran articles for a couple of weeks and it reached the point where a public inquiry had to be held, the pressure was so great. After it was all over that great exposé somewhat fizzled, because I think a lot of the allegations that were front page news for two

or three weeks came to nothing after this public investigation was made.

Mr. Elston: That is a good reason for having a separate public inquiry into some of these allegations.

Mr. Williams: I can understand the frustrations of the prisoners in feeling they have no one to turn to. But on the other hand, in that so-called exposé it was apparent that some of those who had alleged that they had been abused had exaggerated the situation greatly.

I know you recognize that you have to try to balance what they are telling you with the real truth of the matter is. But without pursuing it on the other side, how can you really come to a real conclusion on these matters?

Ms. Cook: That is certainly a very valid point. I would tend to take quite a few grains of salt with every story so that I would not be unduly biased. On occasion I did pursue, as diplomatically and gently as I was able to do, but of course the other side of the story-- You know you are having two polar, opposite stories and you have to go into the middle. I feel, myself, that the only possible way to come to this balance is through an independent review board on which there could be police representation.

Mr. Williams: While you do not like the structure of this, I still come back I guess to the original point: Why do you feel it is better to do nothing than to have at least half--as the old saying goes, it is better to have half a loaf than nothing--if that is the way you feel about it?

Ms. Cook: I do not see this as half a loaf myself. I see it as a sweeping under the rug.

Mr. Williams: I think it is more than that myself, but I cannot see that to maintain the status quo is going to vent your frustrations successfully.

Mr. Franklin: We see it as something that seems to be a remedy and in fact prevents a proper remedy, a really popularly constituted review board which contains people from all sectors of society, including the minorities. This is not in there, a real cross-section of people who provide a neutral forum for complaints; where all parties, police and complainant, can do this in complete safety and security. To us, this bill does not provide that. The way this bill describes the process does not provide that kind of equality, nor any security.

Mr. Williams: Would it not be better to let the bill go forward so that you are proved right, or wrong, as the case may be, than to say forget about it? Hopefully, you will be proved wrong--

Mr. Philip: When do we get the next crack at it, 10 years from now?

Mr. Williams: --and it will, in fact, work successfully. Would it not be better to let it go forward to make the determination whether your analysis and concerns prove out or otherwise?

Mr. Franklin: We come from the point of view of the minorities we speak to, particularly in our client business. The way this appears to be constituted does not answer their needs. We would like to see something really better that does. That is our reason for approaching you.

Mr. Chairman: We do have to move along. Mr. MacQuarrie and Mr. Wrye asked for a supplementary, and Mr. Laughren is still patiently waiting to ask questions of these people.

Mr. MacQuarrie: I wonder, Mr. Chairman, if this delegation has received a copy of the Solicitor General's opening remarks, which outline quite clearly the independence of the public complaints commissioner, and gives us an explanation of the rationale of the investigative process and why the bill provides for the police to carry out the initial investigations of complaints.

Mr. Franklin: I have not, except what I have read in the news media. From what I read, again, I was quite surprised (inaudible).

Mr. Williams: I understand why you have concerns.

Mr. MacQuarrie: Possibly, Mr. Chairman, the clerk would be so kind as to give them a copy.

Mr. Chairman: Apparently there are no copies.

Mr. Mitchell: If none can be made available, I will give them mine.

Mr. Hilton: I would refer these people particularly to page 11 where it says, "Let me describe a few of the more significant innovations that would flow from Bill 68." Then Mr. McMurtry sets out those innovations.

Mr. Laughren: On a point of order, Mr. Chairman, may I assume that these people will be given the Canadian Civil Liberties Association brief too? I would not want them to leave here thinking that the views they hold were not held by an enormous number of people out there in the community.

Mr. Chairman: Yes, there have been several briefs. Mr. Borovoy's was the first, that is correct. Perhaps you can get copies of these briefs and also the Metropolitan Toronto Police Association brief. There have been two or three now.

Mr. Wrye: Perhaps, as well, they should have the brief from the city of Toronto, which we heard yesterday morning and which substantially supports some of the main points that they have made.

Mr. Breithaupt: Why don't they have them all, Mr. Chairman?

Mr. Philip: And the brief that is coming after this, too. I am sure they would find it interesting.

Mr. Wrye: I just wanted to go back to your concerns over the board and go over that with you again, perhaps in a little different way. You are about the third or fourth delegation to express concerns. This is becoming a very regular theme from the delegations.

10:50 a.m.

Before I do that, I am drawn to the comments that I keep hearing about whether we ought to let this bill go forward as if half a loaf is better than none. I find it very interesting that this is a pilot project we are establishing and one would have thought in establishing a pilot project we would try to go for the whole loaf right off the bat and see how it worked.

As you know, section 4 refers to the setting up of a police complaints board. Some of the other delegations have suggested to us their concern is not so much with the group that has training in law, and that is wording that may need to be tightened up, nor are they concerned about the fact that Metropolitan Toronto will appoint five others, another one third, but that where the imbalance comes is in the last group coming jointly from the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association which they feel weighs it down.

We have been exploring with other groups whether they believe we can solve the problem in one of two ways, simply by removing the third that the police commission and association would appoint, or by having a fourth group. A number of them have suggested that.

What would be your views as to how we can properly get a fair balance on this police complaints board? What would be your recommendation?

Mr. Franklin: We have not discussed it in depth, but one of the things we would expect is a group appointed directly by the minority groups concerned.

Mr. Breithaupt: How?

Mr. Franklin: Put forward by the groups themselves--

Mr. Wrye: Let me ask you this.

Mr. Franklin: --the National Black Coalition of Canada, whatever, if there is truly one side, the other side and the middle.

Mr. Wrye: Let me just suggest this, and I do not want to be argumentative. I have sympathy with some of the things you are saying, but I have a problem with that in that a citizen is a

citizen and I do not care whether he is a white, Anglo-Saxon, 50-year-old from Scarborough or a black 18-year old from downtown Toronto, he surely ought to have some balance of representation.

I think if you offer all your representation to the minority groups, who is representing the groups which, for lack of a better argument, are not the minority? Who are their representatives?

Mr. Franklin: I am talking of a mix, that I see them not represented necessarily at all. I see one side would be the police association, but I do not see the side of the minorities.

Mr. Wrye: Could that come through the council of Metro Toronto? Could there be--

Mr. Franklin: It could, but it may not; why so indirect? We feel very much that quota selection and the setting ought to be closer to the popular needs than the bureaucratic needs. The way it is set up, it is so much of a bureaucratic device--of course, this is what it is--that it is quite heavy and prohibitive for people who are in the underdog position even to make use of the process. It is something that is quite difficult to conceive if one has not seen it.

Mr. Wrye: Would you agree with me that perhaps if we could opt for the greatest sense of neutrality within the board, the make-up of this board, true neutrality, perhaps that might not be a better way and would allow for less confrontation?

My concern is that if you have groups, and I appreciate what you are saying, that represent the minorities, and perhaps you leave the group that is appointed under the bill right now, representing the association and commission, but rather than reaching compromises we may continually have confrontation. I do not think that is what you would prefer. I do not think the clients you have dealt with would probably be best served by confrontation. What we want to do is--

Ms. Cook: No. I agree with you. Your concept of neutrality is where it has to be. Neutrality is the whole raison d'etre for having a review board and the whole raison d'etre for our submission. Then how to achieve neutrality--one third of your appointees having training in law, you might get a number of crown attorneys who are certainly not neutral at all.

Mr. Breithaupt: But you might get black or Chinese lawyers as well.

Mr. Wrye: I think that part of the process, would you not agree with me, has to be allowed a chance to work? Once we have those first five--if you have the concern at that point, you can speak long and loud about those five. But we have to, at least--I do not have a problem with that group. We ought to be willing to take our chances a little.

Mr. Franklin: But one side is very clearly pointed out and that is the police association.

Mr. Wrye: Right.

Mr. Franklin: The other side is left very much to chance.

Mr. Wrye: If we were to take that side away, would you be able to live a little easier with the balance on this board, if the bill were to be amended to take away that group that the commission and the association would appoint? Would it give us a little something of an improvement?

Mr. Franklin: What would answer my sense of fairness is really to make sure that all sides are represented and the police side has every right to be represented. The other side is much more left to chance.

The thing that disturbs me in looking at the summary is that it is the police chief who shall establish and maintain, while I think it should be the electorate to take it from neutral ground.

Mr. Wrye: The bureau, you mean, as opposed to the--

Mr. Franklin: The bureau should not be--even have a semblance of being on the police--

Mr. Wrye: That is in a different--that is not really a supplementary to--

Mr. Franklin: Yes. But the composition we would greatly like to see properly constituted to be representative and neutral.

Mr. Wrye: Okay. That is all I have on this.

Mr. Chairman: Thank you. Mr. Philip, Mr. Laughren had asked to speak.

Mr. Philip: Mr. Laughren, unfortunately, had a press conference today that he had to go to.

Mr. Wrye: Do you mean you are not with Richard?

Mr. Philip: No, I think that has been announced in the media fairly clearly a while ago. I am not against Richard; I am just for someone else.

Mr. Elston: Is there someone else?

Mr. Philip: I would like to--

Mr. Breithaupt: I have not heard of anyone else.

Mr. Philip: I simply would like to say that I agree with what has been said by this group. We have been through these arguments yesterday and the day before, so I will not put them back on the record.

I will say this in a very personal way to you people: any time that I have had some concerns where, perhaps, in the--I was not able to go out to a penitentiary to talk to a constituent who

might be at the other end of the city, or I needed some information, you people have been most helpful to me on a number of occasions and the community gets a great deal of service from you which it is not paying for in many cases.

As an MPP, I greatly appreciate the work you are doing. I know I would write you a letter of reference, but that would probably be the kiss of death so that you would not get your jobs. I had better not offer.

Mr. Chairman: Thank you very much. We have another witness coming at 11 a.m. Is there anything you wanted to say in wrapping up?

Ms. Cook: I would certainly like to say that I feel the only possible way to guarantee neutrality is through election to this bureau.

Mr. Chairman: Fine. Thank you very much. That is quite concise. You have arranged with the clerk to get copies of those other submissions.

Allan Sparrow, the Citizens' Independent Review of Police Activities: I would refer the members of the committee to exhibit six as the submission filed by Mr. Sparrow and his organization.

11 a.m.

Mr. Sparrow: If one of the secretaries could distribute this material to the members. While we are waiting for that to go around--

Mr. Philip: Is this additional to exhibit six then?

Mr. Sparrow: Yes. It is additional material.

My name is Allan Sparrow. I am the chairman of the procedures committee of the Citizens' Independent Review of Police Activities. I would like to start off to give you an illustration of how the complaint process currently works in Metropolitan Toronto.

I was in court this week attending a trial where the issue of the way complaints are handled came up. This is a situation which took place back in February 20 of this year. The upshot of the situation was that a man was charged with assaulting police. He, in turn, made allegations about being beaten up inside the police station.

The interesting element about the incident on February 20 was, in testimony this gentleman told the court that after he had been released by the police--he was, at that time, cut and bleeding--he tried to lay a complaint in the police station. If you go into a police station in Metropolitan Toronto, in a prominent place is a sign which tells you five ways in which a citizen can lay a complaint.

One of the five is directly at the police station and the

police are obliged to take that complaint. The gentleman testified that he went to the front desk and said he wanted to lay a complaint against the officers and the sergeant at the desk refused to hear his complaint and told him they would not take the complaint.

The crown attorney questioned the gentleman on this matter and said: "Come on, you are just telling the court that to cover your tracks. Who was the officer?" I do not know his name. In any event, later on in the trial, another witness was called. His name is Mr. Paul Copeland, a fairly well-known lawyer, who was in the police station at the time. His evidence was that he had gone with the gentleman to the front desk of 52 division to try and have the complaint laid and he was present when the sergeant refused to take the complaint.

The other evidence about the way the complaint was handled went like this. After being rebuffed at the front desk, Mr. Copeland took the gentleman to another sergeant in the police station. Mr. Copeland had to leave. The gentleman recounted his story to the sergeant, who noted the fact the man had been cut in a use-of-force report.

The testimony which was given was that this sergeant, with 30 years' experience, testified that, "I have noted it in the use-of-force report and that is like laying a complaint."

When the use-of-force report was produced in court, there was a notation about the man having received an injury in a scuffle outside the police station and no blame was attributed to the police officer, nor was there any note about the person complaining about it.

The evidence was given that was the way the complaint was handled inside the police station. It is extremely interesting and it is typical of a pattern we have seen emerging in the city over the past few years.

The other interesting thing is the role of the police complaint investigation bureau at this trial, which, as I said, concluded this week. Early on in the trial an officer, who was from the complaints bureau and who was attending the trial because there were allegations of police misconduct, approached the crown attorney to suggest that there was some impropriety between witnesses outside of the courtroom.

This was brought to the attention of the judge. She called all the parties in and resolved the fact there was no impropriety. There was the complaints bureau working with the crown, not the complainant, trying to discredit witnesses at a trial.

Later on, in the same trial, when it became apparent there was some difficulty with the testimony of some of the officers, the crown decided to call yet another witness to try to corroborate their point of view. The witness testified under oath that he was approached by the officer from the complaints bureau, who asked him to testify in the case.

The witness' evidence was characterized by the judge as being vague and hostile and she had to take over the questioning of that witness because he would not answer the questions from the defence attorney.

There you have an example, as of this past couple of weeks, of the complaints bureau. Ostensibly they are supporting the complainant, are trying to discredit witnesses on the one hand, and going out and searching out other witnesses to support the police point of view. That is the way the complaints bureau operates now. That is the way complaints are taken at police stations. It is an abysmal situation.

Into the brief, you will note that our brief is different than the briefs of other organizations in that we are not particularly suggesting that you improve the bill. We are saying that you should kill the bill and not proceed with it. Other groups are going to speak later as to why that should be the case, but there are a number of reasons which are fairly obvious.

The bill, in fact, will make it harder to ensure discipline against officers who are alleged to have conducted themselves in a way that's improper, and it will make it more difficult for complainants. That's the effect of the bill.

The onus of proof will not be the same as it is now where it's an employment situation and, on the weight of probability, a disciplinary action can be taken. The onus of proof has been stepped up now to a criminal onus, so this bill gives more protection for police officers against whom complaints are alleged.

Complainants are still liable to be charged with public mischief or sued in the civil courts as a result of their complaints, and the Metro police commission, I guess about two years ago, adopted a policy of vigorously pursuing that type of action against complainants to try to discourage them. The bill does not provide any protection to people who come forward to make complaints to the system that Mr. Linden is supposed to head up.

The other difficulties are that, for example, if the officer gives a statement during this proposed complaint process it can't subsequently be used against him in a court of law.

There are a number of other situations like this that build up to more protection for police officers, no protection for complainants. The process really is a case of layering a redundant body--the one that Mr. Linden is supposed to head up--on top of an existing bad situation. It's what you do when you're trying to produce cosmetic surgery: you don't change the basic problem inside the body, you put a layer of cosmetics on top of it. And that's exactly what the Attorney General is trying to do in this case.

He has been under pressure by minority groups in this town for a long time. He has taken to characterizing their leaders now as people who don't represent the points of view of their communities. I understand that when he testified in front of your committee earlier this week he basically said that the views of

those minority groups are not representative of the populations they serve when they are expressed by the so-called leaders of these minority groups.

I think you should challenge Mr. McMurtry to produce leaders of minority groups who agree with the bill. The fact is that he can't produce one. The only person he can produce who is the leader of a minority group is the head of the Metropolitan Toronto Police Association, who supports the bill largely for the reasons I have outlined: they believe that it will further protect police officers who have misconduct alleged against them. But you should challenge the Attorney General on that and see if he can produce one representative of one organized minority group in this town who supports the bill. There are none.

If you pass the bill in its current form, in fact, you will reinforce the cynicism that people in minority groups have in this city about McMurtry, about this government and about the police. I'm not worried about reinforcing the cynicism towards the government or Mr. McMurtry, but I am extremely worried about reinforcing the cynicism towards the police.

I think the bottom line in all of this is to attempt to work out a situation in which, when misconduct is alleged, people are given a fair and impartial hearing and in which the police don't try to work against the complainant but work with the complainant to resolve the issue.

We currently have a confrontation between the police, whether it's at the front desk or even in the court, trying to dissuade people from laying complaints and then giving them a hard time if they pursue them. Mr. Linden can look in on that 30 days after it happens, in most cases, which will not change the situation one iota.

So I think you have to recognize that that point of view is widely held in the community. In his derogatory comments about minority leaders Mr. McMurtry basically said, I think, that in his experience or with his contact-- Well, the point is that he has not dealt effectively with minority communities in this town.

I have been party to a number of delegations that have attempted to see him on at least five or six occasions in the last couple of years. I haven't seen Mr. McMurtry for three or four years. He's out of town; he's sick; he's unavailable. Or they lock the office and send down some flunkey to listen to what people have to say.

So our Attorney General has been less than outgoing in his attempt to deal with members of minority communities. There was a classic at an all-candidates meeting in the last election up in his own riding where a list of people from minority communities got up at the microphone and went on at length about the number of times they had tried to see Mr. McMurtry and how he had made himself unavailable. People who had been trying to give him a petition regarding the Ku Klux Klan for about six months prior to that finally had an opportunity to give it to him face to face at an all-candidates meeting where he had to come out and face his

constituents and representatives from minority groups.

11:10 a.m.

So his attempt to discredit minority groups is a further reflection of his lack of concern about them. But, as I said, I'm not so concerned about that; that has been self-evident to most of the people in those groups. What I'm concerned about is that it translates into police hostility towards those groups when the Attorney General is hostile to those groups. I think it's something that your committee will have to take into account.

The material that I handed out to you is to give you some further background on the group.

The first sheet is essentially a recruitment form. The only reason I gave that to you is that it shows you two things about the organization: one, that a fair cross-section of groups belong to the organization--the list is incomplete: we expect to double it within the next month or two; and the second thing is that people who join Citizens' Independent Review of Police Activities basically have to indicate that they agree with the main goal, which is to deal effectively with police misconduct, and that they are not members of any police agency.

The reason that we put that in is that another group I have been associated with, the Working Group on Minority/Police Relations, was infiltrated at its beginning by a police officer and a civilian member of the police association who signed false names to try to infiltrate the group. There has been a problem with that, and we're concerned that the people who come to us know they are dealing with a true independent body. So none of our members are associated with any police agency.

That's one of the crazy flaws in this bill: that you still have to go in, and maybe you will get the same sergeant at 52 Division whom the gentleman in the trial got, and try to make a complaint. You can't clean up that part of it. It doesn't matter what Mr. Linden does 30 days after the person was rebuffed at the desk, because he is not going to talk to Mr. Linden; he is going to do what people have been doing for years in this town: throw up his hands at his inability to lay a proper complaint.

The second piece is a flyer that is being circulated throughout the community. You will start seeing it fairly shortly, and it's a reflection of the fact that we are trying to do an outreach program to people. We're saying, "If you have allegations of police misconduct, please call us."

Again, that's contrary to the current system. It's not an outreach program: they put up barriers if you try to make a complaint now. I don't think Mr. Linden, in the bill, has contemplated that he would do an outreach program.

The third element that I have handed around is a set of three forms, and I think they are a reflection of the thought that has gone into this citizens' independent group. I won't lead you through them, but there's about an eight-page procedure associated

with these forms, and we have now about 30 people trained on the procedure and how to use the forms to document alleged misconduct. If you want I would suggest that you ask the Metropolitan Toronto police department for any comparable forms or procedures that they have, and ditto Mr. Linden if he has got to that stage. I think you will find that we have a more sophisticated and reasonable system for documenting complaints than currently exists.

Mr. Wrye: Excuse me, Mr. Sheppard.

Mr. Sparrow: Sparrow.

Mr. Wrye: I've already made a (inaudible) on that, and may I just suggest, Mr. Chairman, that we do exactly that? Could we have given to us a copy, since Mr. Sheppard has made quite a point of it--

Interjection: Sparrow.

Mr. Wrye: --Mr. Sparrow, I'm sorry--of the form that is now used?

Mr. Sparrow: The procedure? Here it is.

Mr. Wrye: The complaint form that is filled out.

Mr. Sparrow: Here is the procedure for a complaint.

Interjection: Conforming to the act?

Mr. Wrye: No, the form that is now filled out, because--

Mr. Sparrow: That is the one that--

Mr. Chairman: The one in your hand--

Mr. Wrye: This is the form that his citizens' group proposes to have. Could we have the one that is now done by the police, which, if I were to go to 52 Division, would have to be filled out? Could I have a copy of that form?

Mr. Hilton: Oh. You mean the one that we now use, not the one that Mr. Linden will eventually produce.

Mr. Wrye: Well, I don't know. If Mr. Linden proposes to have one could we have that too so we could have a look at--

Mr. Hilton: No, I don't think he has yet.

Mr. Piché: You are looking for the existing forms being used by the police right now?

Interjection: That's the only one we have to work with.

Mr. Chairman: Perhaps, Mr. Wrye, the clerk could contact the police to see if there is such a form and, if so, produce it for the committee.

Mr. Piché: Before two o'clock?

Mr. Chairman: We'll see what we can do, Mr. Piché.

Mr. Wrye: Sorry, Mr. Sparrow.

Mr. Sparrow: It happens all the time.

Mr. Wrye: When you are from Windsor, even his wife confuses me with him.

Mr. Sparrow: At this stage we have been in operation for about a week. We have received approximately a hundred calls during that period of time. We have established at this stage about 20 files, and there will be more established where there appears to be some serious dispute between the police and a complainant.

It's very difficult at this stage to give you a breakdown or an indication of what is likely to happen over the course of the year. But in almost every case the only reservation people have is that they want us to confirm to them that we in fact are a totally independent group, totally independent from the police.

One guy called me up when I was on the line and said, "Hey, you are not this McMurtry thing"--or Linden, or the current--and we had to go to great lengths to assure him before he would talk to us, before he would come forward.

So if your objective is to make it easy for people to come forward who have been traumatized in a lot of cases and have been threatened with retaliatory action if they come forward you are going to have to do a lot better than putting Mr. Linden on top of the ant heap. That will not accomplish anything; I can assure you of that.

There are a couple of other points I wanted to make. Some of the media have attempted to characterize this organization as some kind of--the Sun refers to it as a vigilante organization; the Star has made some rumbles here and there. But I think that's again a lack of understanding on the part of the media. Vigilante groups, in fact, dispense summary justice. We have no capability of doing that, nor any interest.

We would exist even if Bill 68 were improved to the point where it meets the specific objections you are going to hear from other groups, because at the bottom line we are there to provide assistance to people who claim that they have suffered misconduct at the hands of the police. We are there providing support, helping them through a very difficult, very scary process; and we'll do that whether the bill is amended properly or is not amended. There's a need for that.

We are closer to an organization like the Rape Crisis Centre, where people who are reluctant to come forward can come and talk to someone sympathetic. That sympathetic group can then support them in an often hostile environment as they attempt to see justice done.

I'll tell you one of the things we are going to do that is significant to your committee. The other point of view we have about the current complaint bureau is that it's a buffer between the police commission, those people whom Mr. McMurtry appoints, and the public. In other words, you don't go and see a police commissioner, you don't go and see Judge Givens or Winfield McKay or Judge Garth Moore when you have got a complaint; you've got to go and talk to that guy at the front desk at 52 Division again.

Those people at the head of the commission who are the people responsible for the conduct of police officers rarely get to hear about what's going on in the streets. Our history with them, and the history of other groups, is that if Mr. McMurtry is hostile to minorities I don't know how to characterize the current police commission. They are a positive menace and a blot on the landscape. The last time I went to the police commission they had about a hundred police officers ringing it, ostensibly to control the people who were coming down, and they were coming down in a civil and reasonable manner.

They have avoided and shirked their responsibilities consistently. The classic example of their shirking their responsibility was after the shooting death of Albert Johnson, when they collapsed and fell apart and had to call in a cardinal of the Roman Catholic Church to try to mediate between them and the minority communities. They have never recovered from that collapse. They are not a competent group of people to deal with the conduct of police officers. One of the reasons why is that they don't want to hear from the public, either.

So one of the things that we are going to do is to bring complainants with a bypass of the complaint bureau and a bypass of Mr. Linden, and we're going to take them straight to the police commission. It's our belief that the police commission, in fact, has an obligation and a duty to hear complaints from people about the officers they are responsible for.

They're not going to like it, but we're going to bring people directly to them. By doing that we accomplish a couple of things that Mr. Linden and this bill don't accomplish.

It's our view that when people go to the police commission they will have at least a form of privilege that will prevent the police from suing them for libel, as has been the pattern in the past when people have been too vocal. We believe as well that if they deal exclusively with the commission and not with police officers they can't be charged with public mischief, as they are now by police officers.

11:20 a.m.

We also believe if they put their statements in a statement form and not an affidavit, they can't be charged with making a false affidavit, which happens now. Anyone now who makes a complaint against the police through the complaint bureau is crazy. I don't know one reputable criminal lawyer in town who would recommend that any of his clients go through the complaint process, because they risk, ultimately, possible civil action,

criminal charge for public mischief and criminal charge for making a false affidavit.

It is a terrible situation for anyone who even wants to contemplate making a complaint, given the history of the laying of those charges by the current police department. We think we could bypass all of that by going directly to the police commission.

The other thing we will do, which Mr. Linden doesn't or won't do, and which the current complaint bureau won't do, is not to try to hold it in house, away from the public limelight, to get some kind of hopeful resolution informally. We will give people advice on laying criminal charges; we will give them advice on civil suits; and we will give them advice on small claims court, which is an interesting vehicle for pursuing some of the allegations about destruction of property and unlawful confinement. That is an area which hasn't been tapped.

In summary, we are satisfied that the current system and proposed improvements won't do anything. It will make it worse for the public, not better. There are avenues available which the public hasn't used before successfully. We are going to encourage the more creative use of the law to get to the root of policemen's conduct in Metropolitan Toronto.

So, we would urge you, basically, not to pass the bill at all but to kill it. If you have any constituents residing in Metropolitan Toronto who have complaints about the police, we would suggest you recommend to them that they call us first; you have got our telephone number. We will be happy to work with them and explain the options, which they don't get from the current police operation or Mr. Linden, and help them through what is often a very traumatic process.

Unlike other groups which are saying do this, that or the other thing to it, we think the bill is so flawed that you shouldn't bother--unless you want to do Mr. McMurtry a favour and he can get up at rubber-chicken dinners around the province, telling selected minority groups: "Look, we passed this bill. You guys are all protected now." It is a load of nonsense. I don't think you should be party to deceiving the public on that case.

Mr. Chairman: Thank you. Does the official opposition have any questions or comments? Mr. Philip?

Mr. Philip: One of the interesting things I found was the manner in which this whole process had already been set up before it came before this committee and, indeed, before you or any of the other groups had an opportunity to express an opinion or present a viewpoint. Do you have any thoughts on that?

Mr. Sparrow: Yes. I confronted Mr. Linden at a meeting of the criminal lawyers' association when the bill had been drafted in its first form. I asked him publicly if he had consulted with any representatives of organized minority groups before he drafted the bill, and he fudged around--I take it he talked to a couple of individuals here and there--and said no, he had not consulted with one representative of any minority group

before he drafted the bill. In fact the only people he consulted with were people in the Attorney General's department, the Solicitor General's department, the police department and the police association. He admitted that freely at the time.

People told him that wasn't very good, and he said there was a rush and that he couldn't do much about it. He didn't give a satisfactory answer. Therefore a number of us were flabbergasted, since he was very apologetic about it at that time, when we read in the newspapers that he is appointed to this position. To the best of my knowledge, once again he didn't consult with any of the groups he is supposed to be helping through this police complaint maze before he accepted the job.

I think that just reinforces the fact that this is a public relations gimmick--put something in place, make it look good, give it a nice-sounding title; even if it works against the public and makes the situation worse.

I am sorry that Mr. Linden is party to that. I find him a very nice person and a reasonable person. I don't know how he ever got suckered into it.

Mr. Philip: I share your view about Mr. Linden. Certainly I can't think of anybody who, perhaps, is as highly respected in the community. Certainly he is in this unfortunate position at the moment.

In reading the newspaper account of your group, there was a list of the various associations that are connected with your group. It is a pretty middle of the road group; it is hardly a bunch of very left wing, radical or anarchist associations, would you not agree?

Mr. Sparrow: I am sure there are a couple of those groups involved as well, but basically I characterize it as a fairly middle of the road group.

You have Quakers involved; Religious Leaders Concerned about Racism and Human Rights has representatives from all the major churches. They are full members and pay their subscription fees. So do other people.

Mr. Philip: Tenants Hot Line?

Mr. Sparrow: Tenants Hot Line, most of the legal clinics in town, I expect, will be in on it and will help clients field complaints through us, not through Mr. Linden or the current process.

Mr. Philip: In the list I also saw a great number of what we would call minority and cultural groups connected with your association, fairly middle of the road, responsible groups, with well-known people. In your dealings with all of those groups, did you find that any one of them was contacted personally by the Solicitor General and their views sought on this before the bill was tabled or drafted?

Mr. Sparrow: No. We surveyed the people who are involved in our organization, and none of them was formally or even informally approached by the Solicitor General.

Mr. Philip: Then I find the statement by Mr. McMurtry, yesterday, to be completely beyond my comprehension. I won't go through the preamble, but he was talking to Dr. Hill, and in response to his rather long answer to Dr. Hill, I said, "Is the Solicitor General trying to say that the views of these groups are not representative of the populations they pretend to serve?" Mr. McMurtry's answer was, "Yes, to a very large extent that certainly has been my own personal experience."

I wonder how you can have personal experience with a group of people whose leaders don't represent their views if you haven't talked to them.

Mr. Sparrow: In my view there is a little bit of a thing going on here. You might recall about a year ago the Attorney General slapped the wrist of Winfield McKay, a Metro Toronto police commissioner who had made derogatory comments attributing problems with the police directly to the black community. McKay went after one whole community and there was a fair outcry about that. The Attorney General stalled and stalled. Finally, you will recall, he called Mr. McKay in and said, "You shouldn't say those kinds of things" and gave him a slap on the wrist.

So I was flabbergasted when I read the quotes in the paper of remarks he addressed to a Sikh organization, talking about minority leaders trying to foment trouble between the police and minorities. That is exactly what Mr. McKay had said a year or so earlier when the Attorney General slapped his wrist. The question is, who is going to slap the Attorney General's wrist? This further statement from him is characteristic of his attitude.

From my point of view the Attorney General is, quite cynically, using minority groups as scapegoats. I don't know what his intention is in doing that. He certainly doesn't know them very well, or the people who are in them, so it might be sheer ignorance. It might even be political opportunism. People in those groups are used to being scapegoated by other elements in our society; I think it is a tragedy when they are scapegoated by the Attorney General of Ontario.

Mr. Philip: I find it incredible that the Attorney General or Solicitor General should say that the representatives of 400,000 people, all of their groups, none of which happen to support his bill in its present form, don't talk to those people. You are talking about a quarter of the population of Metropolitan Toronto, maybe more.

Mr. Sparrow: I have known Mr. McMurtry for a while. If you want my candid view, I think he is prepared to weather the current storm so that a year or two from now, in his curriculum vitae, when he makes whatever political moves he is going to make, he can be the champion of truth, beauty and life, even though he set the process of dealing with complaints against the police back by two or three years by virtue of bring this bill in.

Mr. Philip: The other point he made yesterday is that basically the people in these communities don't understand the bill. I quote from Hansard: "It has been my experience in talking to many hundreds of people during the past year that there is a very significant misunderstanding as to what is contained in the bill."

First he says the groups don't represent the people, and then he says they are stupid, that they don't understand what is in the bill..

I believe you are a lawyer--

Mr. Sparrow: No, I am not a lawyer; I am a management consultant.

Mr. Philip: Okay, management consultant. But most of these groups would have lawyers who are consulting with them and are indeed part of the groups. They would certainly have gone through the bill, wouldn't you say, in your meetings with these various groups?

11:30 a.m.

Mr. Sparrow: Yes. I think in almost every case the submissions have been drafted by lawyers or in consultation with lawyers.

Judge Givens, the head of the police commission, in his attack on minorities--he established police bureaucracy--having a field day attacking minorities, said the people they represent could fit into a phone booth. Well, probably the 30 or 40 people who head up these various organizations, the leaders, could fit into a bank of phone booths, maybe, in the Eaton Centre, but the people they represent are in much greater number than that. In fact there have been some meetings in telephone booths with any number of lawyers involved in dissecting the bill. There have been working groups taking it apart section by section.

The minority communities have been so interested in this bill that when I was on Toronto city council--the city took a position, which you have in front of you--they heard deputation after deputation from minority groups who, even that far back, had taken the bill apart clause by clause, had run it through their lawyers and brought forward recommendations. This is probably the best understood piece of legislation that has ever come down the pike at Queen's Park. At least it is understood on the part of the people it is aimed at, and they don't like it. They know it is wrong, and they know it is fraudulent.

Mr. Philip: In your experience you have not met one of these hundreds of people to whom the minister claims he has talked who has actually claimed that he or she talked to the minister?

Mr. Sparrow: That is correct.

Mr. Philip: Mr. Chairman, it is interesting testimony the minister gave yesterday. I think the testimony stands on its

own. If you can't attack an argument, then attack the person. That is basically what the minister did yesterday.

The other thing I would like to ask you is if by any chance--it seems quite unlikely, and I don't want to sound discouraging--but if by any chance the minister had a change of heart, or an insight that perhaps all of the community groups are not wrong, that perhaps there should be well-trained police investigators, but independent investigators, not part of the Metropolitan Toronto police force, and if we were to get that amendment in, would you then ask us to consider supporting the bill?

Mr. Sparrow: The position of the organization is no, I don't think so. We are taking a strong line on it because we still think that the notion of taking a complaint-- If it were an insult complaint or a minor dispute with a police officer, that should be settled internally as an internal disciplinary matter; you lose a few days' pay or a couple of days' holiday, something like that. That is really the only thing that kind of process can accomplish.

We believe that the issues are only going to be clarified in criminal court, small claims court, civil court and directly in front of the police commission. I think there is some thought, however, if independent investigators are part of the scheme from the very beginning, that we recognize people will feel better about going. In other words, the public will feel much better about it and you will get more complaints aired. We still don't think it is quite the appropriate way to do it. It is one of those difficult questions.

But the bill should be scrapped totally. If that doesn't happen, if you can get an independent mechanism in place at the earliest moment and at the very first moment in every case, there is obviously some merit in proceeding with the bill. That is not the position of our organization but, logically, that would be the case.

Mr. Philip: If that change were brought about, would you see the role of your organization to be quite different?

Mr. Sparrow: We probably wouldn't have to provide the same calibre of support we have to give to people now, and not only the people who have come forward in the last week or so. In my six years as an alderman representing downtown Toronto, being fairly high profile and being known to be concerned about police issues, I had an inordinate number of complaints about the Toronto police department.

In a number of cases I was satisfied that people had been brutalized or that there had been some misconduct. But those people, after the trauma they suffered, did not want to go through any more trauma. They didn't want to go back and have to give a statement to a police officer who was drinking the night before with somebody down at the Orchard Park, the guy he is making the complaint against.

Mr. Philip: But that surely is not what we are taking

about. What we are talking about is an independent police investigator at the earliest stages, someone who may be an ex-police officer or who is trained in police investigation techniques. Certainly you wouldn't want a bunch of amateurs off the street doing police investigation work.

Mr. Sparrow: No.

Mr. Philip: It would be separate from the police force. Surely these fellows are not out drinking with the police force every night. Indeed, there are rules of other bodies that operate concerning socialization with those whom you are investigating or those you are passing judgements on.

If that were in place--notwithstanding the stand your organization has taken officially and publicly for a variety of reasons which is your right to take--do you not agree that your organization would probably be assisting complainants to go through the system then rather than going through some of the rather lengthy procedures you are now claiming you are going to do now?

Mr. Sparrow: Yes, our position now is when anyone calls us and says, "Should I go to the complaint bureau or should I see Mr. Linden informally?" our answer is, "Absolutely not." The peril is too great, and I have cited the reasons for that. If it were a proper independent setup, we would still advise them not to, but not so vehemently.

Our position would still be that it is a buffer between the police commission, which has to be confronted with these cases. If the police commission had any, they could do it right now. They could go out and hire their own. The police commission is separate from the police department. It runs the police department. If they were responsible to handle complaints the way they are supposed to now, years ago they would have had their own set of civilian investigators who would help them get to the root of problems within their department.

We have more trouble dissuading people from going that route because it would seem like a more plausible and reasonable route. I doubt the hazards would be so great.

Here is the bottom line: If you couple the notion of independent investigators with protection from prosecution, then you cannot be sued in civil court; you cannot be subject to criminal charges. If you link those two together, then you will have a workable mechanism. You cannot have one without the other. More people will come forward with one, but they will still be subject to risk.

Mr. Philip: Quite frankly, and I say this not in a derogatory way, if I had a complaint against the police and I had a choice of going to an independent, well-trained police investigator, who was independent and reporting to Mr. Linden or the choice of going before Mr. Givens, I think I would choose the independent police investigator under Mr. Linden rather than going before the police commission under its present form.

Mr. Sparrow: I am a process politician, and so are most of the other people. The fact Mr. Givens is the head of the police commission is a tragedy for this community. We were worried when they created this complaint bureau that it was a way to get rid of Givens from head of the police commission and put him in charge of this mechanism envisaged by Bill 68. People were very fearful that that was how to finally get rid of Givens. Mr. Linden might be a great guy, but he is not going to be there forever.

Mr. Philip: I have had police officers tell me privately--although it is not the official position of their association--they feel an independent, properly trained, investigating system, the kind of system which our party and many of the community groups are recommending, would actually be fairer to the police than the present system.

Mr. Sparrow: I have heard the same informal complaint about the way people have been dealt with inside the department without recourse to an independent arbitrator.

Mr. Philip: They also claim they would find a great deal of injustice would be committed if certain people who may have, for whatever reason, prejudices because of other working relationships, are investigating them on a peer basis rather than having an independent outside, properly trained police investigator. Have you heard those opinions expressed?

Mr. Sparrow: Yes, I have had a fair range of contact informally with police officers, and they have expressed that point of view as well. Mr. McMurtry said, "Independent civilian review has never worked anywhere." I think it sort of works in Chicago; you might take a closer look at the Chicago situation. But it is quite clear that the current system of police investigating themselves does not work anywhere. That is the key.

Mr. Philip: What I find interesting about the Chicago system is that the evaluation of the system, which Mr. McMurtry says does not work, shows the reason it does not work is that it does not go further in the direction of more independence. There is a kind of schizophrenic feeling among the investigators about their role as police officers and their role as investigators.

I have no further questions.

Mr. Williams: Mr. Chairman, I have noted that Mr. Philip felt it necessary to spend a great deal of time trying to establish the credibility of your organization. Perhaps we should pursue that a little further.

I notice he was quick to point out a lot of very reputable organizations have come out in support of your organization, and indeed, there are some. I see the previous speaker is one example, the Quaker Committee on Jails and Justice. I think Mr. Philip tried to categorize all the supporters as middle-of-the-road, moderate thinkers in our community. I see the names of Alderman David White, Alderman Richard Gilbert, Alderman Pantalone, Alderman Cressy, Alderman Reville, Alderman Thomas, Alderman

Sheppard, Dan Heap, MP--they are all elected people of the city of Toronto or have been.

I do not think those people come out as moderates in our society. I think they are understood as being somewhat radical in their views. The lawyers mentioned here too seem to be other than people considered as moderates.

11:40 a.m.

Mr. Sparrow: I will tell you what the difficulty is with the members of Toronto city council who are card-carrying members of the Conservative Party. At various times a number of those people have expressed grave concerns about the nature of policing, and the nature of Bill 68, but they feel obliged to toe the party line, and they are not even worth approaching on the issue. They will express sympathy and regret but they are looking for big careers in the Tory party at a later date and they are not going to step out of line at this stage.

Mr. Williams: Are we to assume that conversely the--

Mr. Sparrow: Especially given the way Mr. Davis has treated some--

Mr. Williams: --elected people I mentioned are card-carrying members of the NDP?

Mr. Sparrow: I think most of them are, as a matter of fact.

Mr. Williams: I assume that to be the case.

Mr. Sparrow: By the way, Alderman Hope is--

Mr. Williams: Alderman Hope is not card-carrying member.

Mr. Sparrow: I think some other aldermen, Johnston and Kanter--we are working on a few other aldermen who will likely come in, plus some suburban politicians who will likely come.

Mr. Williams: Alderman Hope was asked yesterday if he had anything to do with your organization and he rejected that out of hand, other than to say you had had some initial organizational involvement. He renounced the suggestion that he was formally endorsing your organization.

Mr. Sparrow: I won't say anything about Alderman Hope. I have not dealt with Alderman Hope for so long that--

Mr. Williams: I am simply trying to put this into perspective, because as I say Mr. Philip seems to want to portray that you are supported by the moderates in the community. In some instances you have been, but there is some concern raised here when you see some of the organizations who are not moderate. I would say they are quite radical on social issues.

Mr. Sparrow: No, there is no doubt that on issues of

policing that the people I would characterize as more radical elements in the community are more inclined to be concerned about policing, given the history of the RCMP having 800,000 files on otherwise peaceful people and given the role of the intelligence bureau or the Metropolitan Toronto police department.

If you are going to deal with reforming the police, you start off assuming that almost all of those people are going to be concerned about policing. The fact we have gone beyond that and broadened it out is perhaps the significant point the Mr. Philip was trying to make.

We could sign up another 100 groups that are way out there, but we do not particularly want to do that.

Mr. Williams: You yourself were an elected member of the city council at one time, were you not?

Mr. Sparrow: Yes, that is right.

Mr. Williams: Would you consider yourself as having been one of the moderate group on the council or one of the more radical?

Mr. Sparrow: Yes. I do not hold a card or membership in the NDP, so that makes me moderate, I guess.

Mr. Williams: I do not think you necessarily have to be a radical to belong to a political party. But I am wondering whether your perception of yourself was that you were held in the community as one of the more radical.

Mr. Sparrow: My problem was that I was a management consultant before about nine years before I became a politician. I became a politician in the context where the downtown was being destroyed, physically and socially.

Mr. Williams: I thought you were working with one of the oil companies.

Mr. Sparrow: Let me finish the answer. I went through a process of working with people in the community to identify their issues and concerns. Their issues and concerns were different from what somebody in London, Ontario, might have or someone in Mississauga, or in Brampton. I think I represented that point of view very well. It was not my point of view; it was the point of view of the community.

The reason I might have been characterized as a radical, if you want to put it that way, is partly because I do not belong to a party, I do not have to toe the line as the Tory members on the Toronto city council do regarding this bill.

Mr. Williams: You are suggesting (inaudible) radical.

Mr. Sparrow: I do not have to accept some of the dogma of the NDP or other people. I have been, as a representative of downtown Toronto, a very straight-ahead politician. That is

something that is lacking. That is not left, right or centre, or anything; it is just being straight-ahead.

Mr. Williams: When you were holding a position of public trust, did you not get involved with the police in a personal way. Wasn't there some (inaudible) you had with law enforcement agencies?

Mr. Sparrow: That is right. I had more contact with the police than the rest of council put together because of some acute policing problems downtown where I worked very closely with the police.

There was one incident which was somewhat insignificant by itself but which provoked some further thought on my part about the conduct of the police. That is where I made a complaint about a couple of officers whom I thought had acted improperly in dealing with me.

Mr. Williams: I thought charges were laid against you, in fact.

Mr. Sparrow: No, there were not any charges laid against me. They realized they had made a mistake and decided not to lay charges.

I went to the police commission because of the way they conducted themselves. I went to complain to the police commission. What happened after I went to police commission--this is documented--the chief of police, Harold Adamson, at that time, called in the two officers against whom I made the allegation. Of course, they went in quaking in their boots about this alderman making an allegation.

He said to them, "I want you to sue him." I will pull out the file and show you the letter.

They said, "We don't have any money." So they went to the police association, and the police association said, "Yep, uppity loud alderman; we will give you to money to sue him in court."

We went to court, and it was resolved where they were given contemptuous damages of \$1 on the issue.

One of the police officers subsequently went to jail on another unrelated charge where he had brutalized someone, beat them up in downtown Toronto, took them out to Mississauga, beat them up on the Mississauga golf course--made them kneel down, and said he was going to kill them, and fired his gun into the ground. He was one of my arresting officers.

It was my view that if the Toronto police department--the chief--had acted when I made my minor complaint, that person would not have got into that trouble later on.

Mr. Williams: Because of the action taken against you--

Mr. Sparrow: Harold Adamson is gone. I do not bear any

grudges against the Toronto police department. Syd Brown, who is the head of the police association, is not an effective force in the community either.

So, my complaints regarding those two people do not apply to the department. I have very good relations with a lot of the people in the department.

But I was astounded that a person who goes to the police commission could end up on the end of a law suit encouraged by the chief, financed by the police association, and then one of the officers goes to jail.

Mr. Williams: I gather that the lawsuit brought by the police was successful.

Mr. Sparrow: No, there were contemptuous damages. That is not a successful court action.

Mr. Williams: You are saying that is not successful. So the actions were not dismissed.

Mr. Sparrow: No, there was a contemptuous award. It has nothing to do with my view on the police.

Mr. Philip: Even management consultants know a lot about the law, Mr. Williams.

Mr. Sparrow: No, I am not a dummy.

Mr. Williams: Because of these personal involvements with the police--

Mr. Sparrow: That was my only--I am white, professional, over 21. I do not have any problems with the police.

On a minor thing, I go to complain to the police commission and they turned it into a federal case. That's politics. I don't mind that.

Mr. Williams: Have you been one of the primary motivators in getting this organization going?

Mr. Sparrow: By virtue of being the chairman of the procedures committee, I think the combination of my political experience and management consulting has been very useful to this group.

Mr. Williams: You name yourselves as being the Citizens' Independent Review of Police Activity.

Mr. Sparrow: Yes. We are citizens, independent, and we review police activity.

Mr. Williams: But with the independence you claim, is there also a lack of bias, particularly in view of the fact of your own personal involvements with the police. While you say you have no axe to grind, it seems to me there could well be or be

perceived to be a certain bias because of your own publicly expressed views and because of your personal confrontations involving the police.

Mr. Sparrow: Nothing can go forward without the approval of the board of CIRPA.

The board consists of a chairperson, Mark Wainberg, who is a lawyer--a member of the law union. The vice-chairperson is Sylvester Anthony, of the National Black Coalition of Canada. The secretary is Jennifer Sanders, Quaker Committee on Jails and Justice. The treasurer is Ken Bhagan, who is a Roman Catholic priest who is involved with religious leaders concerned about racism and human rights. The legal chairperson is Dianne Martin, who is a wellknown criminal lawyer. The publicity chairperson is Paul Murphy from Dignity/Toronto; the fund-raising chairperson, Bill Atkinson, from the Lamda Business Council; there is me as procedures chairperson.

The nominating chairperson is again Ken Bhagan. Members at large are Alderman White, Suhasni Singh from the India-Canada Association; George Smith, Right to Privacy Committee; Peter Maloney, a lawyer; and Norman Rogers, Toronto Clarion. I think we have a responsible group of people. I do not think any of your real hardcore extremists get in there, unless you characterize people with an NDP card as hardcore extremists.

11:50 a.m.

Mr. Williams: Given that you saw a need to engage in some verbal attack on the Solicitor General, characterizing him in a fashion I suggest to you is some distortion of the truth, I am wondering if the time you spent in doing that this morning has really given credibility to your submissions or perhaps--

Mr. Sparrow: I am surprised that fewer people, including yourself, from this committee haven't spoken out about the Attorney General's comments about leaders in minority communities attributed to him in the Star. I take it there was not much comment on his derogatory comment the other day.

I think there is an onus, more on politicians than other people, when minorities are under attack by people in authority like the Attorney General, there is an onus on all of us to say: "Come on, Mr. Attorney General, you just can't go around saying the leaders of minority communities attempt to foment trouble between the community and the police. You don't go around trying to characterize them as not representing their community. You are playing into the hands of bigots and other people."

It is a tragedy when the Attorney General does that and more people don't speak out against it. I have no qualms. He would do it any time of the day or night and I and other people speak out against it. You might not want to, I realize your problem.

Mr. Williams: I have no problem. I just feel that what you say is perhaps again--

Mr. Sparrow: That is an extremist point of view, the Attorney General's; a very extreme, radical point of view.

Mr. Williams: Your more radical approach to things is reflected in your less than moderate comments about the Attorney General.

Mr. Sparrow: No, I am responding to the less than moderate comments of your Attorney General.

Mr. Williams: I don't think it assists in developing the credibility of your association when you come to the committee--

Mr. Philip: Do you agree with the Solicitor General's statements yesterday?

Mr. Sparrow: Yes, let's hear your point of view on it.

Mr. Chairman: Mr. Williams has the floor.

Mr. Williams: No Solicitor General has gained greater respect in this city in dealing with visible minority groups than the one, same Attorney General, Mr. McMurtry. So to come in and verbally lash him, I don't think that adds credibility to your presentation or to your association.

Mr. Sparrow: I am afraid he was taking such an extremist view as the chief law enforcement officer in this community to cast aspersions on minority groups. I think that is terrible.

Mr. Williams: You are really trying to establish something on behalf of the citizens of the community. I don't think you can do it on a continuing vein of radicalization and radical comment. I think you have hurt more than helped your cause.

Mr. Sparrow: I would like to hear your views afterwards about the Attorney General.

Mr. Williams: I think I stated them a moment ago.

Mr. Sparrow: So you agree with his attacks on minority communities, which is not surprising.

Mr. Williams: That is a distortion of the facts.

Mr. Elston: I sense one of the reasons for CIRPA is to gain some sort of neutrality in terms of the overview of the complaint process. Is there any fashion in which we can develop a neutrality in terms of the present legislation?

We have no connection with your organization in terms of dealing with the problem in a legislated fashion. I think we have a responsibility and a duty and if you see that as a duty and responsibility, what are your suggestions to gain that neutral line? That is really one reason why you should be before us today, to help us see that way. That is what this committee is about.

Mr. Sparrow: I have always been loath to isolate single

incidents. The reason I did the incident at the beginning of this deliberation--I have other examples as well; I will waste a bit of your time by elaborating on a further example, which to me was quite devastating.

By the way, I am writing a two books on policing. One is a book on model policing for the year 2000. It is called Police 2000. The other is an analysis of the Toronto police department from 1970 through 1980. I have been covering a number of trials. One of the trials I covered, as well as this one, was the trial of the police officers charged with manslaughter in the killing of Albert Johnson.

In the middle of the trial, and it was a very complicated trial, there was evidence introduced regarding dimensions, there were photographs and so on. It was introduced one day and I was at the trial and noted it. The next day there were two police officers in uniform who had gone out the night before--they hadn't tried to contact Mrs. Johnson; they had effectively trespassed on her property--with tape measures and flashlights and tried to measure things. Then they took some photographs, which the crown attorney characterized as distorted photographs when he rebutted their evidence.

These are officers who were paid and on duty for the Metropolitan Toronto police department. You would think the Toronto police department would want to make sure that the charges of manslaughter against those two officers were conducted in a fair and impartial way. Here you had officers in the police department who had gone out that same night with tape and tried to contradict the evidence which they gave to the defence attorney. That is another example of the tremendous bias you have when people try to make complaints against the police.

There are lots of other examples of that as well, and I think you really have to make sure in the first instance people do not deal with the police and that there are qualified independent investigators. Going back in Toronto's history, Chief Justice Morand, when you recall there were a number of allegations about brutality within the Toronto police department, was commissioned to do a study. He hired his own private investigators who were extremely competent. In fact, they got at the root of problems which the Toronto police had not gotten to the root of and you will recall Mr. Morand came back with very strong recommendations. The most telling one was his comment that the chief of police has to make it clear that officers should no longer lie under oath and they shouldn't be brutal towards suspects, and a whole series of minor reforms took place. But Chief Justice Morand was able to go out, get investigators who came back with a more definitive picture of the alleged misconduct than the Toronto police had been able to develop.

I think the commission looking into the RCMP had independent investigators who came back with stuff that the RCMP had not voluntarily come back with when there had been allegations made. So the fact there are two models in this country, one in Toronto, Chief Justice Morand's independent investigators, they came back

with better goods in terms of the alleged misconduct than the police did; ditto in the RCMP case.

I would urge you to reflect on both of those occasions and to find some way to plug in the same thing that Chief Justice Morand had available to him and which the commission looking into the RCMP had available to them. If you do that, you will go a long way to restoring public confidence.

Mr. Elston: What about commenting on the composition of the board itself? We had earlier representation from Ms. Cook and Mr. Franklin concerning their concerns about it. I am only going into these other aspects of the bill because I think it is important that we should hear something of your reaction to those elements of the bill.

Mr. Sparrow: I am not speaking for CIRPA now. This is my own personal observation. I cannot obviously go along with the composition but I think the other people were suggesting an election at large for people to that kind of commission.

That is unworkable and probably a bit dangerous. I think we already have well established political bodies and we are overgoverned in this municipality with local council, Metropolitan council and Queen's Park. You might as well be running the show down there any way. There are enough politicians around who are representative one way or another of the general population.

My own view would be, and this is not a direct answer but I think you will see what I am getting at, that the police commission is really the problem. I think I have been suggesting that up until now. The police commission should be turned over holus-bolus to Metro. It should be a standing committee of Metro council where they select a combination of people to sit on it, but Metro council makes the final decisions. That is not radical or revolutionary. Every city in the United States is essentially set up that way--I should qualify that.

The problem with a lot of American cities is that the system is different than up here where the mayor has a lot of residual power. In Los Angeles, for example, when I talked with police officials and the mayor there, the mayor appoints the police commission. The mayor says: "A, B, C, D, E and F, and you are going to be reflecting the community and you are the police commission. You take care of the day-to-day running of the operation." That is the norm.

There are not as many situations where the council appoints a commission. I think that is the way to do it. If you have a standing committee of Metro council, with 10 or 11 people on it dealing with police matters, reporting to Metro council, they you have real accountability. I think that committee could have its own set of investigators and so on, support staff that work for it independent of the police department. That is the preferred route to go.

12 noon

Mr. Philip: A Globe and Mail article of August 26, with the headline, "Keep Politics From Police, Official Says." It states:

"It would be unwise to grant politicians a majority of seats on the police commission, Walter Lee, chief citizen complaints officer of the Ontario Police Commission told delegates of the Association of Municipalities of Ontario. He said: 'The experience in Canada and US municipal police forces has shown that in order to maintain the integrity of the police, it is best to separate politics from policing. It might lead to something undesirable.'"

I find that interesting, because it seems these comments would appear to fly in the face of the positions taken by the Metropolitan Toronto council and the Robarts commission. Was that not your understanding?

Mr. Sparrow: That is correct. I think the analysis of American jurisdictions is simplistic. I am familiar with a number of police forces there. I have done a reasonable amount of research over the years and there are as many good ones as there are bad ones. Just like in Ontario, there is a police chief charged up the road, five officers down the street. Around Ontario there have been a whole spate of charges against police, including senior officers. So the system doesn't work much better here than it does in the States.

You can isolate Ohio or Michigan--places I am familiar with--and you can find in the course of a given year the odd police chief will be charged. So Canadians tend to overreact to the situation in the States mainly because they are not familiar with it. My experience with a number of American police departments is, because they are controlled by the local politicians, when things go off the tracks they are corrected much more rapidly.

When there are allegations of serious misconduct, you could take a look at the case in New York City where a number of commissions were established and a number of drastic steps were taken to clean up whole sections of that department. Those are the local politicians who instigated all of those reforms.

In Toronto the police commission is so far removed from reality. The current one is more tainted than most because the head of it was obviously a political appointment of the most opportunistic kind, so you got a case of politicians controlling it but politicians who are removed from reality and in some cases would never have gotten there on merit.

Mr. Philip: And is it your recollection that the provincially appointed Morand commission also came out with recommendations that were, in fact, opposed to what Mr. Lee has stated publicly on August 26?

Mr. Sparrow: I didn't follow the question.

Mr. Philip: The Morand commission also came out with recommendations that would not concur with those voiced by Mr.

Lee. It might be useful to send Walter Lee a copy of today's Hansard.

Mr. Sparrow: Just the one further point that goes back to Mr. Williams. In fact, when I was a radical alderman on Toronto city council, early on during that period I went to the police commission to complain about systematic harassment of young people in downtown Toronto. That was from firsthand observation. In fact, the Morand commission covered that same period.

The report of the Morand commission was much more scathing than anything I said at the time. The Morand commission found that the bulk of those problems were concentrated in the three divisions which comprised my ward. So at the same time that your Attorney General--if he were then the Attorney General--might have characterized me as being radical and said, "Shut up, there is no problem," in fact the chief justice whom he appointed--not Mr. McMurtry but the previous Attorney General--reviewed it and came up with even more scathing comments than I was making. So it is a danger if you are a politician if you wait for things to happen and you don't try to anticipate them.

Mr. Mitchell: Following this line of doing away with the police commission and putting it into the hands of the council, I gather, Mr. Sparrow, you were not around when, in fact, the control, if you will, of the police forces was in the hands of the politicians.

Your argument in fact is flying in the face of all the arguments that were put up at that time to take away from the politicians that responsibility where any politician--any alderman, any controller or whatever--every time you went into the police station to raise something, whether it was a drunk driving charge or whatever, the police didn't know where to go and who to go to. That is why they took it out of the hands of the politicians.

You are saying that you want to take that retrograde step and put it back into the hands of council. Do you realize the problems that would create? I just can't believe it.

Mr. Sparrow: I think the 35--I guess it is 37 or 38 now, I have lost track--men and women who sit as councillors on the Metropolitan Toronto council, and they are politicians, are more representative of this community than the one politician, the Attorney General (Mr. McMurtry), who single-handedly controls the police department.

Mr. Mitchell: I challenge you that there was more interference of the politicians in the police force before the commission than there is today.

Mr. Sparrow: I know a number of lawyers who believe that Mr. McMurtry is single-handedly generating more interference than any combination of individual councils before him. I think it is dangerous when you give so much power for control of police to one man who is not accountable to the people who foot the bill.

The fact is you might not like it but the people of Metropolitan Toronto foot the bulk of the bill for policing. Mr. McMurtry can even be so outrageous as to put people like Mr. Givens on in exchange--

Mr. Mitchell: Let me tell you, I served on municipal council the same as you and I thank God I did not have that responsibility.

Mr. Sparrow: I do not think you could meet it, frankly.

Mr. Mitchell: I am not too sure that you were able to meet it either.

Mr. Chairman: Gentlemen, we are getting away from Bill 68 right now. Mr. Wrye, please.

Mr. Elston: Sorry, Mr. Chairman, I am not finished.

Mr. Chairman: Sorry, are you are not finished?

Mr. Elston: We sort of got supplementaried almost out of existence.

Mr. Chairman: Yes, you did.

Mr. Elston: There are a couple of other areas I wanted to take a look at. One is the idea that the process which we get finally in place here be seen as being done on a neutral ground, if I might continue on with that theme.

We have had indications from others that some groups view this as a police protection bill. That is sort of a quote from the National Black Coalition of Canada. If there are not some areas where police feel they have some protections during investigations, how do you make them at ease with the system? How do you make it neutral in their eyes, is what I am saying I suppose?

Mr. Sparrow: I guess, having been an employer at different times or in a position where I have an authority over employees--and the most recent example is the city of Toronto and Metropolitan Toronto by virtue of sitting on different committees and so on--if the only effect of my deliberations about alleged misconduct of one of my employees is that they will be fired or suspended or lose some pay or lose some holiday time, then I would think the system that works for me in dealing with my employees should work for the police, if that is all you can do with the police.

I think there is a tendency to view the police as being some kind of extraordinary category of people who are not subject to the same scrutiny and the same rules as anyone else. That is a faulty analysis and we do not want to get into a big philosophical diatribe on that. But if all Mr. Linden can do is recommend that the guy be fired or that he lose \$50 pay, then the rule should be the same as for any other employer and that is just based on the balance of probability.

But what they have done is made it difficult to even make those types of complaints. It turns into a whole quasi-legalistic courtroom type hassle.

What is going to happen is, who is going to want to go and complain if the guy is going to lose two days' pay. He ought to go to the internal hearings. The cop ultimately is protected from anything that happens later on. It is a farce. That is why we are saying to people, "Don't bother going."

The only penalty is you might get the guy fired in the extreme. Do it through small claims court, do it through laying a criminal charge or go to the police commission and at least get it aired in public because if you go the other route, not only do you not get much satisfaction, the public does not find out what is happening in the process as well.

So no, I think the police should have exactly as much and no more protection as anyone else when it comes to complaints about them and their role as an employee. What we have done is created this huge jungle of crazy legislation that makes it even more difficult to get at the problem and at police officers who commit misconduct. So it is a retrograde step all the way down the line. It does not make any sense at all.

Mr. Elston: One area I was interested in as well is the number of time it has been indicated there have been threats of one sort or another levelled against people who might be thinking of laying a complaint.

I know you have given us an example. We have heard other examples this morning. Have you taken a look at some sort of statistics of the number of people who have come in contact with your organization at this point? For instance, I think you mentioned a hundred calls you have had in the last short--

12:10 p.m.

Mr. Sparrow: It is too early to sort that out at this stage.

Mr. Elston: Do you think that sort of thing is the rule rather than the exception when a person goes to the bureau?

Mr. Sparrow: No. When they go to the bureau they will not be turned off as crudely as the person went to the front desk at 52 Division. If they go to the bureau, the line they get from the bureau is usually, "Oh, this may be a tempest in a teapot." Probably there is some onus on the bureau to try and make some kind of reconciliation but ultimately I think they work to discourage people from complaining.

The other thing that almost invariably happens is the information given to complaints bureau officers ends up in the hands of police officers. The statements the police officers give the complaints bureau never end up in the hands of the complainant.

Then you go beyond that and you see the conduct of the

complaints bureau at the trial, which I alluded to. He is there to try, if you like, to see if there is anything in terms of misconduct and he is working against the complainant. So it is a much more subtle kind of operation. It is not a crude turndown any more.

Mr. Elston: One of your concerns about a person going to the complaints bureau and the results never becoming public may very well end up to be alleviated under the current system. That is that there are reports that have to be made to the public complaints commissioner, for instance, which I presume at some point will be coming back to us in a report to us.

Do you find that the role of this independent person may solve some of the problems which your organization is most concerned with at this particular time--a personal comment rather than for your organization?

Mr. Sparrow: Given that this organization has been in place for a little longer than the system that is envisaged, you will get statistics from us as well, but I really think Mr. Linden is going to get cases coming to him from those people who are ignorant of the hazards, going that route and who believe you can do something about it.

He will probably also tend to get more of the minor misconduct related allegations. We will probably get the ones where people are alleging physical beatings, where they are frightened, afraid and they do not want to get into the two current systems. You are going to have trouble analysing the kind of information that comes back.

I think the Attorney General will get some mileage out of Mr. Linden ostensibly being independent and having some real clout in terms of attracting people to use that service. You had better make sure that Mr. Linden gives everyone who comes in to him a little form that says: "You may be sued in civil court by the police if you want to pursue this. You may be subject to public mischief charges if you deal directly with any police officer."

Mr. Piché: With a five-year sentence.

Mr. Sparrow: Yes, you may be. Mr. Linden cannot solve those problems. I think we can give better advice on how to avoid those pitfalls than Mr. Linden can.

Mr. Elston: Just one other things: Mr. Williams took a great deal of time this morning trying to characterize your commentary this morning as a personal assault by you against the police or at least indicating that. I just want to clarify for everyone that the material you presented this morning was on behalf of your organization, except where you alluded to the fact it was a personal comment. Is that the case?

Mr. Sparrow: That is correct.

Mr. Williams: On a point of order, Mr. Chairman: For the

record, my concern was the verbal attack that Mr. Sparrow directed against the Attorney General, not against the police.

Mr. Breithaupt: I just have one question, although it might be in about eight parts. For those of us not from Metro Toronto, one of the things is to attempt to come to grips with just who represents whom in this situation. We were told yesterday by Dr. Hill that there are perhaps 400,000 people in Metro Toronto who can be classified, if they do not mind, as the visible minorities.

As my colleague, Mr. Wrye, mentioned this morning we look forward to having a balance here so that the 50-year-old WASP lawyer in Scarborough and the 18-year-old black youth in the downtown are equally represented. Of course, we all know it is more likely the latter is going to have need of this kind of circumstance on average than the former.

A variety of groups can very quickly spawn other groups and it is hard to know, other than from your earlier comment that it seems whatever groups there are favour your point of view and no groups--and we will have to look into this further--favour the view of the Solicitor General.

In looking down this list that is attached to your application form, which obviously is incomplete because others will no doubt get involved, I see the names of some organizations with which even I am familiar, the Union of Injured Workers, the India/Canada Association. I know something about the Law Union, but there are other groups about which I know very little, some presumably raised just for the event, such as the Albert Johnson Committee against Police Brutality, a result of a most unfortunate and particular circumstance.

Many people may no doubt be involved in several of these groups and that is fine because, in any community, the active people can very easily show an interest in a variety of things, so there is nothing wrong with a person being a member of 10 groups.

Could you or perhaps Mr. Mark Wainberg, when he appears before us, provide for us some background or some of this numbers game as to who might be represented? For example, I do not know what Partisan is or Dignity is or the RIKKA, and it would be helpful if we could get a sense of the various segments that are being claimed to be represented by five or 50 or 500 memberships--I do not know, how much that is reflected, how much it is by an election kind of process, by a sort of self-anointment.

We all face this in all of our communities. Groups are brought together for an event that is a particular one. For example, your executive contains a variety of people who are obviously interested in their own specific group and perhaps in others too.

How can we get a handle on just who is involved? We see individual names and we are familiar with many of them, but in the others, it is more difficult to try to get a sense of, does this list mean a third of everybody is involved? On the other hand,

does it mean that five per cent is but, of course, since in most communities half may not be interested--after all, in the last election almost half did not even bother to vote, much less how the other half did vote. It brings all sorts of balancing acts.

Mr. Sparrow: I could tell you about CIRPA. If you want to pursue backgrounds of the other groups, I think you are going to have to do that.

Mr. Breithaupt: Yes, it is perhaps not fair to ask you.

Mr. Sparrow: One comment as I have been a politician as well: I think there is some onus on you to get a feel for--and that is what you are trying to do--who is speaking in the community and who they speak for. I do not dispute that but I think you are going to have to largely find that out for yourself. I do not think the Attorney General has gone to the trouble to do that and I think he has gone to great pains to avoid dealing with people from these communities.

Mr. MacQuarrie: That is hearsay.

Mr. Sparrow: Of course it is. I have tried to see him on a number of occasions for people and he is never there. But, if you would not interrupt--

Mr. MacQuarrie: (Inaudible).

Mr. Sparrow: The point is the population of this province is seven million and a large chunk of it is concentrated here. I realize you are provincial members, but I think there will be a lot of issues coming up in Metro Toronto where you are going to have to have a good feel when it happens. I cannot help you too much in that respect.

Mr. Williams: Just on that point, Mr. Sparrow, if I might pursue it, surely any organization that is proud to publish a list of declared supporters would themselves be concerned as to who the people are who are coming out to support them. Surely you would not blindly accept anybody coming on board as one of your supporters without really knowing who they are and how many are involved.

12:20 p.m.

Mr. Sparrow: That's right.

Mr. Williams: So how can you say, "I don't really know; maybe you can research it yourself"? I find that hard to fathom.

Mr. Sparrow: Do you want me to come back this afternoon and--

Mr. Wrye: I don't think that is what you were saying.

Mr. Sparrow: No.

Mr. Wrye: Would you provide us with a breakdown because,

like Jim, I am from out of Metro Toronto and I don't know what RIKKA is either. I would be interested to know.

Mr. Sparrow: I will run through some of them now to the extent I can: the Ward 6 community organization membership varies--

Mr. Williams: Dan Heap's organization?

Mr. Sparrow: No, not at all. That is the Ward 6 NDP. This is quite a different organization.

The best gauge of the membership is prior to an election. Before the last election a year or so ago it had about 1,000 members, all of whom live south of Bloor Street down to the waterfront. About 50,000 people live in that community, so having 1,000 members out of a 50,000-member residential community downtown is an extremely significant group. Given the concentration of policing problems downtown, I think it has clout.

I think the Lambda Business Council has probably in excess of 100 businesses that are owned by people who are gay. It is a collection of gay business organizations downtown; a fairly significant number again.

Religious Leaders Concerned About Racism and Human Rights: I think there are nine or 10 churches, including the Catholic and Anglican churches and so on. Their clergy sit on that committee. There are probably more than that; maybe a dozen or so.

At last count the Law Union had 500 or 600 members. I might be high on that. It might be closer to 200 or 300; it seems to go up and down.

RIKKA is a cross-cultural quarterly publication. It is relatively small. I guess it has an editorial board of several people on it, but they do a lot of work publishing material. So that is a very small organization that wanted to be associated.

Mr. Williams: What is their main objective? What type of publications do they involve themselves in?

Mr. Sparrow: A lot of it has to do with the Japanese culture principally. The publisher is Japanese and a lot of it traces the history of the Japanese community in Canada, taking a look at where it is at the present time. They did an interesting issue on the police. They got nine or 10 contributors to put it out. They have a mailing list of about 1,000--something like that--who receive the publication on a regular basis.

The Working Group on Police/Minority Relations might end its life shortly and come in to CIRPA, but in its heyday it had a number of public meetings at city council which attracted in excess of 500 or 600 people. I think it had a membership of roughly 1,000 when it was very active.

Mr. Williams: Are you saying the people there are basically your people in your organization now?

Mr. Sparrow: No. The Working Group on Police/Minority Relations had a lot more people from visible minority groups than the Ward 6 community organization. Contrary to what people think, other than the Chinese community, there is not a great concentration of visible minority people who live in downtown Toronto. So that organization had more representatives from visible minority communities.

Mr. Hilton: Is not Doug Ewart of the Attorney General's department a member of the Working Group on Police/Minority Relations?

Mr. Sparrow: No, I understand the problem. There are a about four or five groups that have similar names. This is totally independent. That is why it is good to clarify it.

The Working Group on Police/Minority Relations was formed after the police association published those articles that attacked Jews, Catholics, everybody else. As far as I know there is no representative from any established government agency on the working group. It is a totally independent citizen organization.

Mr. Hilton: And Ron Kendrick from the Solicitor General's department is not on that either?

Mr. Sparrow: No, unless he is an individual member and we don't--

Mr. Hilton: No, as a representative of the ministry?

Mr. Sparrow: No.

The Right to Privacy Committee is probably the broadest based organization representing the gay community. I was at a meeting and I think their last membership was up to about 1,200 people. It is by far the largest organization in the gay community. There is a little duplication between the Right to Privacy Committee and the working group, but it is about 90 per cent different people than the Right to Privacy Committee.

I don't know too much about the Quaker Committee on Jails and Justice. I think that is a relatively small group of people. A number of them are involved in the bail project.

Mr. Williams: They were here before you.

Mr. Sparrow: So you know about them.

Mr. Hilton: But you did say that one of their members was on the executive of CIRPA.

Mr. Sparrow: The Quaker Committee on Jails and Justice?

Mr. Hilton: Yes.

Mr. Sparrow: Jennifer Sanders is the secretary.

The Albert Johnson Committee Against Police Brutality: There

is probably some overlap with the Working Group on Police/Minority Relations. It was a special interest group that was formed after Albert Johnson was shot to death. It was the group that organized a demonstration of about 3,000 black people which surrounded and shut down 53 Division, I think, at Eglinton and Spadina shortly after the killing.

I don't know where they are at now. At this stage I believe they are more concerned about proceeding with the civil action against the chief of police, the board of police commissioners and the police officers who were involved in that unfortunate incident.

The Rape Crisis Centre is a relatively small organization of active people who provide consulting services. Their view was that we provide a-- If you want to look for an analogy, we are probably closer to the Rape Crisis Centre in terms of our function than any other group I can think. People call, saying something traumatic has happened to them. We provide support and assistance to help them out.

The Metro Toronto chapter of the National Black Coalition--

Mr. Wrye: They were here before.

Mr. Sparrow: Yes, you know them.

I am not sure of the membership of the Black Resource and Information Centre, but they are funded largely by the Ministry of Community and Social Services. They provide an interchange for people in the black community; it is exactly what it says, resources and information. They do a lot of paralegal work, helping people in the black community who are having problems with the law.

I think you are all familiar with the Union of Injured Workers. They have been down here often enough, so I do not have to describe them.

Gays and Lesbians Against the Right Everywhere is a more activist group than the Right to Privacy Committee. If you are looking for activists, Mr. Williams, you will probably find more people in that group. I do not know the size of the group. I would be surprised if there were more than 100 people or so.

The Riverdale Action Committee Against Racism is a community-based organization in Riverdale which was formed to deal with racism in the community. Particularly when the Ku Klux Klan moved into the neighbourhood, they organized a demonstration against the KKK and brought in a broad range of people from the community to deal with that issue.

I will have to think about Partisan.

Mr. Hilton: Is that John Argue?

Mr. Sparrow: I think it might be. I have lost track of Partisan. It has been around--

Mr. Hilton: No, I mean the Riverdale group?

Mr. Sparrow: He might be an executive member, but I am not sure. I live in Riverdale, but I moved in shortly after they got established so I have not had time to get connected with them.

Mr. Hilton: I was born and raised there long before they even were there.

Mr. Sparrow: The KKK came in after as well.

Mr. Hilton: My sheet doesn't fit.

Mr. Sparrow: Oh, I doubt that.

They responded to a current problem in the community when the KKK established its office and started recruiting kids in the schools in that neighbourhood.

Partisan is a collective of artists. They have a gallery on Dundas Street. They do a lot of political art at the appropriate time; for example, effigies of Mr. McMurtry

Mr. Williams: (Inaudible) post-no-bills locations?

Mr. Sparrow: They do a lot of work for the labour council on Labour Day parades, doing capitalist characters with money bags and what not.

Interjection: One form of art.

Mr. Sparrow: They are a small group. They wanted to be associated.

I just know Dignity by reputation. They have been around for a while. They are people in the gay community. I think they are a lot of people with a religious background who in a much more quiet way are striving to achieve some kind of reasonable treatment for people in the gay community. I think they are relatively small but very effective.

The South Asian Origins Liaison Committee--

Mr. Breithaupt: They will be coming before us.

Mr. Sparrow: They are an umbrella group of a number of people of the South Asian community.

Metro Tenants' Legal Services is a legal clinic with a board. I am sure Mr. McMurtry or somebody appoints people to the board. They take the view that they provide assistance to people who come in the door.

The lawyers you probably know. Neighbourhood Legal Services is another downtown neighbourhood legal clinic. I think some other neighbourhood legal clinics will get involved as well because they get people who can complain to them and they are going to patch

them into our system rather than to the complaint bureau or going to Mr. Linden.

I think there are a few others as well.

12:30 p.m.

I must say--and I should point this out clearly--this group was effectively pulled together back in June, July. There was a decision made to go ahead and establish the procedures and so on to get the thing going initially. The recruitment is only starting now for more groups and for individuals and there will be a formal meeting of the organization probably in January, probably in city council chambers which will be filled.

The current board is an interim one. As you can see there is an interim chairperson, and a proper board will be constituted and so on. Our goal is to get twice or three times as many groups as are currently listed here. We froze it in June. We decided we had to get on to establish something because we were getting so many complaints coming through to us that we couldn't handle and in good conscience we couldn't refer them to the current complaint process. So we are stalled right now.

We have a 24-hour phone line going and our volunteers set up. We are now going to start actively recruiting other organizations and individuals.

Mr. Breithaupt: Have you turned down any other groups or individuals or do you know whether groups that perhaps have been spoken with prefer to work with the Solicitor General in the development of this bill?

Mr. Sparrow: I am not aware of any group that is working with the Attorney General or has worked with the Attorney General in the developments of this bill.

This might help Mr. Williams later on. When the list grows to 50 or 60 I think the policy of all the responsible groups that I know in downtown Toronto, if they are a coalition group, is to allow any group to join that agrees with their goals. So later on you will probably see more ultra-left groups and things like that signing up. I don't think this organization has the power to turn them off unless they misbehave themselves or whatever.

The recruiting goal is to expand, if you like, the middle base and beyond that. But I would expect in January, when it is really well established, you will have the whole range of the spectrum up to but not including what you might call the right wing in downtown Toronto. They will not join and I doubt if any card carrying PCs will join because of the difficulties internally.

Mr. Williams: I certainly appreciate the analysis you have given, but based on that analysis do you still hold to the position taken by Mr. Philip at the outset that he is trying to establish that the groups and individuals supporting you were in the majority among the moderates and middle of the road people,

given the fact that some of these organizations now have been more clearly identified?

Mr. Sparrow: Yes, I think in terms of downtown Toronto the bulk of them are in the moderate and reasonable category. They have trouble representing their special interests given some of the social climate, which again has been created by other people--the gay community in particular views itself as under significant attack by people in authority.

Mr. Williams: That is from a downtown perspective.

Mr. Sparrow: No, I think that is across Metro.

Mr. Wrye: If I can just very quickly ask; I am interested. You said in your first week of operation you had 100 calls and have opened some 20 files. What happened to the 80 you didn't open?

Mr. Sparrow: If you go to the complaint bureau now and make a complaint, it will take a couple of months before it is resolved. You don't hear anything back during that process. It is going to take us a while with some of them. There is a fair amount of callback going on with some of the other 80 calls.

A number of them, as you would expect when you get publicity about a new group, are somewhat stale dated and people are being advised now that if it was more than six months ago send us the information. We would like to note what happened and who was involved, but basically they have lost any rights to proceed legally and so on. So we are doing a lot of that work.

So the 20 files that are open are more current things and things where people are providing statements. I would think probably about a half a dozen of those are recent and reasonably nasty incidents involving people and the police. That seems to be the way it is breaking down.

Part of our problem, because we are committed to outreach, is that after the initial publicity dies down, the number of calls will die down as well; which doesn't mean that--it is like rape; it doesn't mean it doesn't happen. So as well as a recruitment program there will be an attempt to let people know in a broader way throughout the community that we are available and provide support.

So it is really hard to gauge what is going to happen. You get an artificial peak after your form and it is going to bottom out, then, probably when we go to the police commission with the first four or five people who are going to have serious allegations to make in public, it will go up again. But we are trying to establish a more broadly based understanding that we are there all the time; we are there to provide support. We are not judgmental. We give people advice. We certainly aren't vigilantes because we couldn't be even if we wanted to and we certainly don't want to be.

Mr. Philip: A supplementary: The experience of the

Ombudsman and, indeed, I guess of any newly elected politician--yourself, I am sure, if you think back--is that often the moment a new office is opened everybody who has had what one would call an illegitimate complaint or complaint that cannot be substantiated floods in to the new office. Once they come to understand then that they cannot prove their case, often the peak drops off and the quality, if you want, of the case work improves.

Mr. Sparrow: We are finding that already. Instead of the 30 or 40 calls a day, after the first day the numbers have dropped. But if you are getting four or five, or two or three calls a day, well over half of those will be more solid whereas, yes, there was a lot of stuff that came in that was too difficult to deal with. We are not going to advise people to proceed with things. I mean we give advice but we--

Mr. Philip: People who have mental illness of various kinds and that kind of thing.

Mr. Sparrow: Yes, that is a tricky area. I don't want to be put in a position of characterizing the Toronto police department. I have a high regard for the bulk of the people in that department but I don't have a high regard for the commission or the management of the department--that is another issue.

Given that there are bullies in the Toronto police department--and with 5,000 people there will be bullies in the Toronto police department, no matter what any of do about it--the psychology behind that kind of attitude is when you are going to do something to somebody you do it to somebody who can't get back at you.

I know from my previous history--and it is starting to crop up again--there are some people who have criminal records or have records of instability of one sort or another and just by virtue of having those backgrounds, it is very difficult for them to be believed when they talk about serious misconduct directed against them. It doesn't mean it doesn't happen. That is a very difficult issue to resolve.

I think we will get a lot of people who know that they won't be heard properly in the regular society for various reasons. In fact, things have happened to them but no one will pay any attention.

Mr. Philip: But you are probably getting cases of people who claim that the police are gassing them through their back window--that kind of thing.

Mr. Sparrow: No, not yet. Surprisingly not. I anticipated that from my own experience as an alderman. I got a number of the X-ray and the gas and all the rest of it but we haven't had any--which surprises me out and out--

Mr. Philip: The extreme psychotic--

Mr. Sparrow: We have had harassing calls by people and I think we know where they are coming from but, aside from crank

calls of that nature, we haven't had any real serious crank calls.

Mr. Chairman: Fine, thank you very much, Mr. Sparrow.

Mr. Sparrow: It has been my pleasure.

Mr. Chairman: Thank you for appearing before us and assisting us.

The committee recessed at 12:38 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT

THURSDAY, SEPTEMBER 24, 1981

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Philip, E. T. (Etobicoke NDP)
Piché, R. L. (Cochrane North PC)
Wrye, W. M. (Windsor-Sandwich L)

Substitution:

Hennesy, M. (Fort William PC) for Mr. Andrewes

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister
Ritchie, J. M., Director, Office of Legal Services

Witnesses:

Batchelor, D., Private Citizen

From the Coalition against Bill 68:

Tator, C., Co-ordinator; President, Urban Alliance on Race
Relations
Wainberg, M., Member

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, September 24, 1981

The committee resumed at 2:18 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Toronto Police Force.

Mr. Chairman: Gentlemen, we have a quorum. Mr. Wainberg and Ms. Tator.

Members, could I draw your attention to exhibit 5? That's the presentation of these people. Your organization is the Coalition Against Bill 68. Will you both be speaking? Who is the spokesman?

Mr. Wainberg: We will both be speaking.

Mr. Chairman: Fine. Thank you. Whoever wishes to lead off, would you go ahead?

Oh. Excuse me. Members, Mr. Laughren and Mr. Hennessy--maybe it is relevant to Mr. Laughren. The chair is going to disallow supplementaries except with the consent of the following speaker, because this morning Mr. Wrye, Mr. Laughren and Mr. MacQuarrie all ran out of time as, in Mr. Elston's words, "I nearly got supplementaried to death." So no more supplementaries unless it's with the consent of the following speaker.

Mr. Philip: We should also disallow cigar smoking, or some of us will not be able to ask any questions.

Mr. Mitchell: Keep it up, Mick. Mr. Chairman, that's a good way of keeping him quiet.

Mr. Hennessy: Well, at least you're in one part of the (inaudible).

Interjections.

Mr. Wainberg: Okay. I'm not sure I understand what supplementaries are. Are they additions for me?

Mr. Chairman: No. Supplementary questions are these members jumping in ahead of each other. It's a ground rule.

Mr. Hilton: They are questions arising out of the other question that is under discussion.

Mr. Wainberg: I see. Fine. Thank you.

Ms. Tator: I'm Carol Tator, president of the Urban Alliance on Race Relations and co-ordinator of the Coalition Against Bill 68.

2:20 p.m.

The Coalition Against Bill 68 is made up of representatives of the list you have before you, which constitutes organizations and community groups. Some of these organizations, as you will see, such as the Council of Chinese Canadians in Canada and the Council of Muslim Communities in Canada, are umbrella organizations that have constituencies made up sometimes of dozens of other organizations.

So the first remark I would like to make is really addressed to Mr. McMurtry's theme this week, which is, "Those who criticize the bill and oppose the bill are self-appointed spokesmen who represent no one but themselves." In fact, members of this coalition are almost all presidents or members of the executive of their organizations. Not one of them was self-appointed; we were all elected by our organizations.

This issue has been debated in every one of the executives of these organizations. Therefore, the view of this coalition is not the view of 10 or 20 self-appointed spokesmen; it is the view of people who represent literally thousands and thousands of people in Metro. For example, the Urban Alliance on Race Relations is made up of 200 people; the Temple Emanu-El is made of 700; the Right to Privacy Committee has 1,200; the Jamaican-Canadian Association, 400--

Mr. Hilton: Pardon me. The Right to Privacy?

Ms. Tator: Do you want those numbers?

Mr. Hilton: No, I don't want the numbers, just the organizations.

Ms. Tator: I gave you that list.

Interjection: We have a list.

Mr. Hilton: Oh, we have a list. Thank you very much. I'm sorry.

Ms. Tator: The Urban Alliance on Race Relations is made up of 200 people; Temple Emanu-El, a reformed Jewish congregation, has 700; the Right to Privacy Committee is made up of 1,200; the National Association of Canadians of Origins in India is made up of 75 people, but it's not a member organization, so they are really dealing with hundreds of people in Toronto.

The Jamaican-Canadian Association, 400; the Committee for Racial Equality is made up of 100 individuals, but 40 organizations are represented by the committee; the National Black

Coalition of Canada is made up of 20 national organizations; the Religious Leaders Concerned About Racism and Human Rights, I think, has about 200 clergymen from all over Ontario.

I don't have numbers on the Canadian-Caribbean-African-Asian Ministerial Fellowship; the Canadian Council of Churches simply sits on the coalition, so you can't say they represent any specific numbers; the Association of Gay Electors, approximately 75; the Riverdale Action Committee Against Racism is 100.

The Black Resources and Information Centre serves the black community of this city, and they do not have membership; the Council of Chinese Canadians in Canada, again, serves the Canadian Chinese members of our city, but we have no specific numbers. The Cross-Cultural Communication Centre deals with people of different cultures; they have 700 people with whom they communicate and with whom they have done a general assessment on how they feel about this issue. The Pakistani Cultural and Consulting Services--

Mr. MacQuarrie: Would you attach a figure of 700 to that?

Ms. Tator: Well, they don't have members. Some of these organizations do not have membership and others do. I don't have numbers of the next four.

The Indian Immigrant Aid Services serves 2,000; the Council of Muslim Communities in Canada is made up only of organizations, and there are 10 organizations serving literally thousands of people in this city.

Mr. MacQuarrie: I missed those on the list you gave us.

Ms. Tator: The Council of Muslim Communities in Canada.

Mr. MacQuarrie: Oh. You have skipped down to the bottom.

Ms. Tator: Yes. I'm afraid I don't have numbers. I didn't see the value of it until Mr. McMurtry's recent statements, so I tried very quickly to get a handle on what we're dealing with here.

Finally, the Ontario Federation of Labour represents 800,000 individuals. Their executive has supported the position of the coalition and is participating in the coalition.

In summary, what I'm trying to communicate to you is that there is a very broad constituency of people out there in the city of Toronto who are deeply concerned about Bill 68, who are opposed to Bill 68 and who do not see it as an improvement on our present system of dealing with complaints against the police.

The final point I would like to deal with in Mr. McMurtry's most recent statements is the allegation that those who are opposing the bill and creating all this turmoil are doing so simply for the purpose of creating controversy. The fact is that if you look down this list of organizations, beginning with the Urban Alliance, we have, I think, established a very credible

history and a very long record of working with police in communities to do exactly the opposite: to build trust and confidence in the police and to get the police to begin understanding our communities. Therefore, our purpose is to restore confidence and trust in the police, not to destroy it.

Mr. MacQuarrie: Apart from the Ontario Federation of Labour with its large membership the next largest figure that you gave us was the Right to Privacy Committee. Now, what is that committee?

Ms. Tator: Do we have a member of the Right to Privacy Committee? It's made up of gay individuals who--

Mr. MacQuarrie: Pardon me?

Ms. Tator: It's made up of gay individuals.

Mr. Wainberg: I believe they will be making a submission to this committee as well.

My name is Mark Wainberg, and I would like to present the brief. I believe you all have copies of it. I will be embellishing it a little, so if I appear to be saying things that aren't there that's what I'm doing.

The Coalition Against Bill 68 is made up of representatives of over 40 community and ethnic groups and individuals who want a truly effective police complaints procedure for Metro Toronto. The coalition believes that Bill 68, which is now before the Ontario Legislature, is almost as inadequate as the existing complaints procedure, which has proven to be totally ineffective in controlling police misconduct. Bill 68 in its present form is unacceptable to the coalition and does not have the support of any minority group in Metro Toronto except the police.

What's wrong with Bill 68? First and foremost the police are still investigating themselves from day one. Bill 68 establishes a public complaints commissioner who has the power to start his own investigation of a complaint against a police officer, but only after the police have had a 30-day head start in their investigation. The public complaints commissioner has a limited power to intervene within the 30-day hands-off period, but Bill 68 makes sure that this power is so restricted as to be virtually useless.

I would like to refer to section 14(4) of the bill, which states that "A decision to take action under clause (c) of subsection 3"--which is a decision by the public complaints commissioner to intervene at that early stage--"shall be deemed to be made in the exercise of a statutory power within the meaning of the Judicial Review Procedure Act."

What that does is to give the chief of police the right to apply to the Supreme Court of Ontario to stop the public complaints commissioner from embarking on an investigation, even if the public complaints commissioner considers that there are extraordinary circumstances involved.

It would be much fairer, certainly, to give the complainant a right to apply to the Supreme Court to compel the public complaints commissioner to intervene at that early stage. That section is very one sided: it only gives the right to the chief of police to question the public complaints commissioner's decision; it doesn't give any right to the complainant, and I would submit that that's extremely unfair.

The effect of that section is also to make it very difficult for the public complaints commissioner to intervene, even if he thinks there are extraordinary circumstances. Once the court application is made the chief of police can apply for a stay of proceedings and, in effect, can sort of tie up the public complaints commissioner until the court has time to deal with the arguments of both sides. So really that subsection of section 14 makes the power to intervene within that first 30 days virtually useless, in my opinion.

Mr. MacQuarrie: On that, I think you're basing your remarks on the premise that the public complaints commissioner is not acting in the interests of the complainant, and consequently he has certain powers, including the right to apply and the right strenuously to defend any action that might be taken under the Judicial Review Procedure Act.

Mr. Wainberg: I am certainly not questioning the bona fides of the public complaints commissioner. It's just that the way the legislation is drafted his powers are very limited. I am not questioning his good faith.

2:30 p.m.

Mr. Elston: If I might say so, I think the public complaints commissioner is in effect not acting on behalf of anyone. As I understand, he is there to determine how the dispute between two individuals can be remedied. I do not see him acting for one side or the other. I see him as an independent, totally independent of one side or the other. If I am wrong somebody should probably straighten me out.

Mr. MacQuarrie: In any event, he is acting to ensure that the complaint is thoroughly and properly investigated. In that sense, it is true he is acting in an impartial capacity.

Mr. Philip: Nobody is questioning the impartiality. The question is, at what stage does that impartiality start to take effect?

Mr. MacQuarrie: Well, if we get into shades--I am sorry, let us not argue.

Mr. Chairman: Better let Mr. Wainberg continue if he would please.

Mr. Wainberg: I was trying to think of a situation in which the early intervention by the public complaints commissioner could jeopardize an investigation. The only situation I could think of was when the police officer himself has not been informed

of the complaint. There is some merit in keeping the public complaints commissioner at arm's length, because once he comes in the police officer will know. Once the police officer knows that he is being investigated, I cannot imagine any situation in which Mr. Linden would jeopardize the complaint by coming in and interviewing witnesses and so on.

I would ask the members of the committee to consider that and possibly that section could be amended to indicate that once the officer has been informed of the complaint, that the public complaints commissioner could come in immediately, automatically and would not have to prove extraordinary circumstances. In my submission, that would not be unfair to anybody.

Leaving the initial investigation in the hands of the police defeats the whole purpose of having an independent police complaints mechanism. It is too easy for police officers to conduct their investigation and write their reports in such a way as to influence the public complaints commissioner against the complainant. The procedure will therefore not appear to be fair to the complainant or to the public. Certainly Alan Borovoy made the point to you two days ago that the perception of unfairness is a very important factor to consider.

Contrary to recent public statements in favour of Bill 68, independent investigation does work. I would like to refer to the first footnote in the brief. Metro Police Chief Jack Ackroyd is quoted as saying: "There is no place in North America that civilian investigation of complaints against police has ever worked." However, there was an article in the Toronto Star on November 12, 1980, setting out the Chicago police complaints mechanism. You are probably familiar with the Chicago experiment. I realize there are some drawbacks with that. It is not as independent as I would like, but civilians are doing that initial investigation.

I would also like to know if there is anywhere that the police investigating themselves has worked. Certainly we have heard the argument that the opposite is true, that there is no place in North America where civilian investigation has worked. Where has any type of investigation worked? Certainly police investigation of police has been tried in Toronto. It has been a dismal failure and I would submit it is time to try something else.

The Morand commission on Metro police practices and the McDonald commission on the RCMP used outside investigators. The Canadian and Ontario human rights commissions used civilian investigators. The Chicago police complaints system relies quite successfully on civilian investigators and is still alive and well despite rumours to the contrary.

Two: The proposed complaints process is stacked so heavily in favour of the police, that a complainant will have little chance of success, regardless of the merits of the complaint. A police officer has more protections under Bill 68 than an accused person has under the Criminal Code, even though the officer does not face criminal consequences, such as imprisonment, fines or probation.

More significantly, Bill 68 gives far greater protection of police officers than is enjoyed by doctors, lawyers or other professionals who are suspected of misconduct involving members of the public. Some examples of the protections enjoyed by police officers under Bill 68:

(a) The right to be informed of the complaint before any investigation begins unless the person in charge of the police complaints bureau, another police officer, decides that immediate disclosure might adversely affect any investigation of the complaint.

However, such early disclosure would tend to jeopardize almost every investigation. Every police officer has a notebook in which daily occurrences are recorded. In each and every case there is a possibility that an officer, once informed of a complaint against him might make additions, deletions or other changes in his notes in order to cover up any possible wrongdoing on his part.

It is therefore vital that an investigator of a complaint be permitted to seize and inspect the officer's notebook before the officer is informed of the complaint against him. It is also essential that eyewitnesses be interviewed immediately before their memories fade and before they have an opportunity to discuss the case with each other or to make their stories coincide.

Many criminal investigations begin before the suspect is informed that he is under investigation. This is only natural, particularly where undercover surveillance or wiretap evidence is involved. Investigations of complaints against police officers should be dealt with in the same way.

(b) The right to be investigated by members of their police force.

(c) The right to lay a criminal charge of public mischief against a complainant simply for having made a complaint. Several complainants have been charged with this offence in recent years, and this practice will continue as long as the initial investigation is done by the police. The possibility of being charged with such a serious criminal offence is a strong and unwarranted deterrent against making a complaint.

I believe that the National Black Coalition of Canada made the point yesterday that if civilians do the investigation, then on the wording of the public mischief section of the Criminal Code, a complainant could not be charged with public mischief, because it is only if he causes a police officer to embark on an investigation that he can be charged with public mischief. So that is an additional point in favour of having civilian investigation.

(d) The right to examine documentary evidence before the hearing of the complaint against them. The complainant has no such right to see the officer's evidence. Certainly it would be very valuable for a complainant to be able to see the police officer's notes before the complaint is dealt with by the board. It would be only fair for both sides to have equal rights to disclosure before

the hearing but the bill does not provide any rights of disclosure to the complainant at all, only to the police officer.

(e) The right to remain silent. In Ontario all other professionals regulated by statute, including doctors, lawyers, dentists, nurses, architects and public accountants, can be compelled to attend and give evidence at hearings convened under their respective professional statutes to consider complaints against them. If any of these other professionals refuse to testify, they can ultimately be imprisoned for contempt.

The reference there is to section 12 of the Statutory Powers Procedure Act, which states that: "A tribunal may require any person including a party, by summons, (a) to give evidence on oath or affirmation at a hearing, and (b) to produce in evidence at a hearing documents and things specified by the tribunal relevant to the subject matter of the proceedings and admissible at a hearing."

That statute governs most disciplinary proceedings. However, it is specifically excluded by section 19(10) of Bill 68. I would submit that there is no reason why that provision should be excluded. Police officers should not be treated any better or any worse than any other professionals who deal with the public on a regular basis.

(f) The right to prohibit any confession made by the officer to an investigator from being used against the officer at his hearing. The police would be outraged if this right were given to accused persons in criminal cases. No other professionals have this protection. Giving this right to police officers is ridiculous.

2:40 p.m.

I would like to refer to the footnote there. Solicitor General Roy McMurtry has been quoted as saying that "effective internal discipline requires that police be allowed to do the initial investigation, and that a police officer cannot refuse to answer questions addressed by a superior officer without risking dismissal."

I do not have any dispute with the second part of that statement, but the argument ignores section 19(10) of Bill 68 which provides that the officer's answers to his superior officer's questions cannot be used against him at his hearing without his consent. Even if the police officer makes a full confession to his superior officer, the confession cannot be used against him at a hearing before the police complaints board. It cannot even be used against him in disciplinary proceedings under the Police Act. I cannot understand why that is, but it is very clear in section 11 of the act that that is the protection that is being given.

Bill 68, therefore, actually hinders effective internal discipline in the Metropolitan Toronto police force. There is also a possibility that an officer, during the course of an investigation, will lie to his senior officer, give a false alibi

that can be proven wrong quite easily through other witnesses. It would be very valuable, and it is certainly very valuable in criminal cases, when police officers manage to get a false statement from an accused at a very early stage. It totally undermines their credibility, but the way that Bill 68 is drafted, the police officer can lie through his teeth at the initial investigative stage, and any lie that he tells to his senior officer cannot be used against him.

I would like to refer to a statement that Paul Walter, president of the Metropolitan Toronto Police Association, made to this committee on Tuesday. I am referring to the Globe article on that, and committee members can correct me if Mr. Walter was misquoted. Mr. Walter was suggesting that the bill should not allow complaints to be entered on an officer's personal record if he admits misconduct at an early stage.

Well, the way the bill is drafted now, if an officer makes a confession at an early stage, it cannot be used against him at a hearing before the board. It cannot be used against him in disciplinary proceedings. The only use that can be made of that confession is that it can be entered on his record. No disciplinary proceedings can be taken but it can just be entered on his record.

Paul Walter wants that one possible use of a confession by a police officer to be deleted, so that it cannot be used for any purpose at all. So if an officer even signs a confession, if Paul Walter's suggestion is adopted, then that confession might as well be put in a box and buried in the ground. It is completely useless and it cannot be used for any purpose at all.

Police Chief Jack Ackroyd has been quoted--I am referring to a Star article of July 18, 1981, entitled, "The Go It Alone Feelings on Stalled Bill 68." He was quoted as saying that, "Civilians are unskilled at making investigations and police officers, generally a suspicious lot, are likely to stonewall a civilian investigator."

I have already dealt with the question of other people being skilled in making investigations because the human rights commission and various other bodies have used civilian investigators quite successfully.

The second part is what I would like to deal with, that officers are likely to stonewall a civilian investigator. Well, this bill does the stonewalling for them. They do not have to stonewall because nothing they say can really be used against them.

Returning to page three of the brief.

(g) The right to have the complaint dismissed, unless it is proven "beyond a reasonable doubt." This is the criminal standard of proof. Such a high standard in disciplinary proceedings is not required in any other profession. This standard of proof is unprecedented and totally inappropriate where the only consequences are employment related and not criminal in nature

such as imprisonment, fines or probation. I would like to elaborate on that.

None of the professional statutes covering complaints or allegations of professional misconduct against architects, public accountants, lawyers, doctors, dentists or nurses require that high a standard of proof. Those professionals can have their licences revoked by their respective disciplinary bodies and suffer the loss of their livelihood on a standard of proof far less than the criminal standard of beyond a reasonable doubt.

While there is some case law that suggests the proof required in hearings on allegations of professional misconduct may lie in the upper ranges of the probabilities required in the civil standard of proof, which is balance of probability, it has never been set nearly as high as the criminal standard of proof. The furthest the courts have gone in these cases is to require that the decision-making body be "reasonably satisfied" that the misconduct occurred and that proof be "clear and convincing" and that it be based on cogent evidence.

Once again there is no reason to put police officers in an exalted position. Treat them like other professionals. Don't give them any fewer protections, but don't give them any more protections either.

(h) The right to have his legal costs paid by the Metropolitan Toronto Police Commission, if the commission deems it fit to do so. That right is contained in section 19(17) of the bill. There is no provision in the bill for payment of the legal costs of the complainant. The complainant who wants legal representation will have to pay for it himself. Without legal representation a complainant doesn't stand much of a chance, particularly with the high burden of proof set out in the bill.

I should add here that it is almost inconceivable that legal aid would give a certificate to a complainant to pursue his complaint through the board.

Mr. Philip: Do other professional organizations pay the fees of their members? Say someone has to appear before the College of Nurses, would the--

Mr. Wainberg: No way.

Mr. Philip: You know of no other case in which this happens?

Mr. Wainberg: No.

3. The composition of the police complaint board is unsatisfactory and unfair. The board will consist of the following persons--I am sure you know what the board will consist of. There is no provision for representation of the most frequent victims of police misconduct, minority groups, such as blacks, South Asians and gays. Police and the police commission have a direct say in who will represent them on the police complaints board, but the public does not. Only Metro council does and Metro council is not

even directly elected by the public. If the composition of the board is to be balanced and fair to both sides, the public must have a direct say in who will represent them on the board.

The one third of board members who are to be nominated by Metro council should, instead, be elected by the public every two years in municipal elections, in the same way as school trustees. The appointment of the remaining one third of the board members who are to have training in law should be subject to approval by a majority of the other board members. This procedure would ensure a fair and equitable police complaints board.

There is no guarantee in the bill that the legal people who will be appointed are going to be impartial. They can be lawyers who have represented police officers all their lives. If that is the case, then you are going to have a board which is stacked against a complainant. It could work the other way as well. There should be some check on the impartiality of the legal people involved who are appointed to the board.

Our demand: The Coalition Against Bill 68 therefore demands that Bill 68 be withdrawn and that a new police complaints bill be introduced, which would include the following provisions:

1. That a civilian complaints board that is independent of any police force should be in charge of all complaints from the time they are lodged;

2. That police officers be given no greater procedural protection than doctors, lawyers or other professionals against whom complaints are made by members of the public, and no greater protection than accused persons in criminal cases;

3. That one third of the members of the police complaints board be elected every two years in municipal elections, that one third be nominated jointly by the police commission and the police association and that the appointment of the remaining one third who are to have training in law should be subject to approval by a majority of the other board members.

2:50 p.m.

In conclusion, I would like to refer to one other statement recently made by the Solicitor General. I believe Mr. McMurtry made this statement to this committee on Tuesday of this week. I am sorry, I cannot find the exact quote. The essence of it was that Mr. McMurtry indicated that the complainant would not have to have anything to do with the police; he could go to the public complaints commissioner and he could avoid the police completely.

That is technically right, but the first thing the investigating police officer would do is he would come and interview the complainant. If the complainant refused to talk to him, the police officer would quite rightly say the complainant has been unco-operative. He would write that in his report and it would be almost inconceivable that Sid Linden would deal with the complaint. If Sid Linden did deal with that type of complaint, then everybody would refuse to talk to the police and Sid Linden

would have to deal with every complaint and recommend that a board of police commissioners look into every complaint.

Basically the complainant has to talk to the police. It is the same old system with one extra level. He can lay the complaint at the office of the public complaints commissioner but the possibility of intimidation and the fear of the police are still not addressed by this bill.

Those are my submissions.

Mr. Williams: Mr. Chairman, I am sorry I have to leave early for another meeting, but very briefly, there is just one point I wanted to cover, Mr. Wainberg. It is one that has been discussed frequently over the past day or two and it is the fourth recommendation or demand, as you say in your brief, dealing with the composition of the members on the board.

The suggestion of having the one-third number elected at large is one I think the majority of members of the committee were inclined to think was somewhat impractical rather than going through the appointment route. I found it interesting to find that even Mr. Sparrow, who was here this morning, suggested as well that it was an impracticality to suggest that it be done through the elective process. That argument has been gone over quite a bit in the past day or two.

You have added a new element here which I think is most interesting. I know you tried to explain it earlier in your comments, but I really think it runs counter to the very type of equality you say you are seeking out as far as balance in the appointment of the group, when you suggest for some reason--and I really can't see the rationale in this--that the other two thirds should for some reason be given the power in a majority vote to decide who the members will be of the other third, mainly the legal profession. You are defeating the very argument that you are putting forward, that you are seeking equality but yet for some reason it appears that the legal profession or those who have training in the law are suspect.

Mr. Wainberg: Certainly it does seem--

Mr. Williams: It does. There is not logic in that argument and I think that is the weakest part of your argument, with respect. As I say, the concept you put forward about elections is not new but that is a new element that I think really undermines the very argument that you are making for equality in representation on the board. I just don't see that. The fact that they have special skills and your presumption that they are weighted in favour of the police, for some reason, there is just no foundation in fact for that.

Mr. Wainberg: I am not saying that all lawyers are weighted in favour of the police. It is just that it is possible to put together a board that is weighted in favour of the police or a board that--

Mr. Williams: You said it looked that way although you

conceded it could be the other way around. Your own perception is that it would be, because that is what you just said in testimony a few moments ago, and that is why they had to be picked from amongst their peers, so to speak, before they would be accepted on the board.

As I say, I think it goes in the face of the very argument you are trying to make.

Mr. Wainberg: What I am suggesting is that the government choose the candidates. This is what happens in the United States. I believe there is a Supreme Court of the United States justice, a woman, I cannot remember her name, who had to be approved basically by both of the parties, if I understand the procedure correctly. What I want is to get lawyers who are acceptable to both sides.

Mr. Williams: You are surely not comparing that to this, as being the same situation?

Mr. Wainberg: That is the inspiration for dealing with this in that way. Unless you elect them, I cannot see any other way to ensure impartiality and I have difficulty with elected judges. I do not like the procedure they have in the States for electing judges, but if you are going to have a fair representation in the legal one third of the board, this is the only way that I could think of to ensure that impartiality and that fairness.

Mr. Williams: I accept your argument, but I just do not see the consistency there, with respect.

Mr. Wrye: Mr. Chairman, I have a fairly substantial number of questions because I think--

Mr. Chairman: We do not have a substantial amount of time.

Mr. Wrye: We are getting into some basic repetition of problems here. The first thing I want to ask, and perhaps Mr. Hilton should be answering it or perhaps Mr. MacQuarrie, I would like to know what the situation is of people going and lodging their complaints with the police complaints commissioner. Mr. Wainberg has raised that problem and has suggested that he is not too sure exactly what the Solicitor General is talking about.

He has raised the possibility that after the complaint is lodged the policeman shows up at the complainant's door. He has also suggested that if indeed the Solicitor General is perhaps taken at his word--correct me if I am wrong--everybody is going to be showing up at the PCC, that that would indeed be a better way to go. Is that correct, that you could envisage a lot of complainants showing up at Mr. Linden's door?

Mr. Wainberg: Certainly. If a complainant refuses to talk to the police and he insists on getting a hearing before the board, what can Sid Linden do? If he deals with that complainant on the complainant's testimony alone, he is going to open the

floodgates and everybody is going to avoid the police. It would be unworkable. In practicality, a complainant has to talk to the police or he is not going to get his hearing.

Mr. Hilton: The only way I could say is that the bill provides that a person does not have to go to the police. That has been found objectionable by many people, and so it has been determined that the complaint can be laid at the office of the PCC. When you look at the definitional section at the start, that may be made orally or in writing. In other words, a person can write a letter and leave it at Mr. Linden's office and that will be a sufficient complaint. That is not what I understand you are saying.

Mr. Wainberg: It is the next step.

Mr. Hilton: It is the next step, when he then, as he is obliged to do, makes everybody acquainted with the fact that the complaint is there, then the investigation is being done by a police officer and he goes off to interview the complainant and the complainant says, "Get lost," and will not talk to him. There is a difficulty there.

I think the police would be quite capable in that investigation of getting their information other than from him. They already have his story in either his written or oral complaint to the PCC's office. I do not see that the interview is a necessary step and I have that much confidence in Mr. Linden that I do not think that he would be insensitive to the fact that, having come through the route of his office, they would then say, "Because you did not go and co-operate with the police by giving them a statement," completely negating the importance of the fact that the complaint can be made directly to him in person or in writing, that he would on that basis then say, "I cannot look at the complaint, you have not seen fit to talk to the officer."

I would submit there might be some deficiency in evidence, I have to admit that, but there may not be, depending on the circumstances. I do not think anybody has come before this committee yet who has accused Mr. Sidney Linden of insensitivity or lack of desire to make this thing work.

3 p.m.

Mr. Wrye: With respect, Mr. Linden is not the issue.

Mr. Hilton: No, but I mean he will provide that sensitivity.

Mr. Wrye: Mr. Linden is not the issue. The bill itself is the issue. If Mr. Linden were forced to go away tomorrow to something else, who would be the next PCC?

I want to ask you something based on one matter that bothers me and that is, I think those of us on the committee may have disagreements but we all are concerned with coming up with a procedure that will work for those of you who live here in Metro,

and it seems to me we have to come up with one that can be acceptable to the police as well as being fair.

That being the case, let me deal first with the misconduct measure that Mr. Walter talked about. I really had not made up my mind on misconduct. I thought Mr. Walter raised an interesting problem, which was the problem of a very minor matter that gets put on his record and then prevents him from promotion.

Let me give you an example, and I will take from the CIRPA complaint report this morning: number five, unprofessional conduct, sloppy, indifferent, inefficient. Let us say we had this kind of a minor complaint raised on an indifferent attitude of a police officer and in the informality of solving the complaint the police officer said: "I was very tired, I have been having trouble sleeping. I am sorry, I guess I was a little indifferent." It was resolved that way, and yet for some reason it was put on his record.

Can you appreciate what Mr. Walter is saying? I wanted to use the minor one rather than the major one.

Mr. Wainberg: I cannot see that that would jeopardize an officer's chances of promotion if he had one really minor incident on his record; it is not an absolute bar to promotion. But if he had 10 of these, or 20 of them, if none of them goes on his record, then this guy is going to get promoted who should not get promoted.

Mr. Wrye: Mr. Walter suggested as his compromise that the PCC would get copies of all these reports and he should have the right to jump in and say after three of these against one officer, "Hold on, no more of these informal resolutions that do not get put on the record, enough is enough." He would set a number.

Can you see that as being--

Mr. Wainberg: I do not think that police officers should be treated any differently from other professionals. If a lawyer, for example, commits a fairly minor breach of ethics, say he communicates with another lawyer's client directly without going through the lawyer, there may be a letter in his file at the law society and that should be there. Surely that is not going to prevent him from being appointed a judge, or whatever.

If he does this on a regular basis, the law society should know that and have a record of it, and I do not see why an officer should have a free bite. Lawyers do not get free bites, doctors do not get free bites. Of course, if it is a major matter--I am not sure exactly what Mr. Walter said, the Star and the Globe gave slightly different reports.

Mr. Wrye: I think I am reasonably paraphrasing what he said.

Mr. Wainberg: Okay, was he dealing only with minor matters?

Mr. Wrye: Yes, I think that is fair to suggest, something that is informally resolved. Let me go to one that is much more crucial, I think.

Mr. Philip: Just as a supplementary, how does this differ in any way from, say, a head nurse on a ward of a hospital noting minor problems committed by a nurse on that very ward? It might well be, in the overall picture on the long term basis in judging the promotion of such a person, quite important. It all depends on whether there are five instances that are not malpractice but are not good practice, or there are 105. Maybe for personnel purposes, management should know these kinds of things.

Mr. Chairman: Mr. Wrye, in keeping with the previous ruling, are you happy with that question that had no question mark at the end?

Mr. Wrye: I do not think it was a question. Perhaps Mr. Wainberg can just say, "I agree."

Mr. Philip: I asked you that actually as well.

Mr. Wainberg: All right, I agree.

Mr. Wrye: I will just touch one more area if I might, Mr. Chairman. There seems to be a basic contradiction between some examples of the protections enjoyed by police officers under Bill 68, and the basic disagreement or contradiction I read into your submission is between (a) and (g).

On the one hand, in section (a) you believe that many criminal investigations begin before the suspect is informed that he is under investigation and then you propose that investigations of complaints against police officers should be dealt with in the same way as criminal investigations, that is, that they have no real right to be informed that they are being investigated for the reasons you outlined.

Then we get down to (g) and you say: "The right to have the complaint dismissed unless it is proven 'beyond a reasonable doubt.' This is a criminal standard of proof." Although it seems to me you have a--

Mr. Wainberg: There is a contradiction because the bill is contradictory.

Mr. Wrye: Let me ask you--I agree with you about the bill, but I will give you my own biases--I agree with you on (g) and not on (a).

I have a great deal of sympathy for people being told that when a complaint is lodged against them they are the target of an investigation. It is, remember, a complaint, not a criminal investigation. Would you find yourself able to live with that kind of thing, if balance of probabilities became the standard rather than reasonable doubt.

Mr. Wainberg: Certainly, if police officers were treated

like lawyers and doctors all the way through, I would be quite happy that they would be informed of the complaint immediately. But the bill should be consistent. It should not pick and choose the goodies for the police officers from the criminal process and the civil process.

Mr. Wrye: Then we have no problem, I am glad to see you want to be consistent as well. Those are my questions.

Mr. Chairman: I think Mr. Hilton had a couple of questions.

Mr. Hilton: One or two, yes.

You spoke of the Chicago incident and you referred to the articles in the Star; are you aware--

Mr. Wainberg: I discussed this with Mr. Linden. I am aware that the civilian investigators are in the police station.

Mr. Hilton: They are police employees to be hired or fired by the police.

Mr. Wainberg: Yes, but that is still more independent than the investigation we have within the first 30 days under Bill 68.

Mr. Hilton: That is a matter of opinion, but you are aware of it.

I think your brief is a very helpful brief. While I do not agree with much that is in it, it is helpful and it approaches this in a very constructive way. If this committee, or the House, should see fit to make the amendments that are summarized in the last of your brief, that is, in the section "Our Demands"--I do not like the word "demands" but your requests of what you consider would be helpful, if they were incorporated in the act, would you be satisfied with the act?

Mr. Wainberg: Certainly.

Mr. Hilton: You are the same Mark Wainberg who is the signatory of "To: Concerned Parties" on the top of the CIRPA document?

Mr. Wainberg: Yes. I have discussed CIRPA with Mr. Linden.

Mr. Hilton: Were you aware that this morning the representative of CIRPA, Mr. Allan Sparrow, gave evidence before this committee that no matter what amendments they might make, it would never be satisfactory to CIRPA?

Mr. Wainberg: CIRPA would refer people to Sid Linden if Bill 68 were improved.

Mr. Philip: Mr. Chairman, I think that the record will clearly show that CIRPA did not say that. The indication was that

there would be a role for that organization even if the bill were reformed in the way in which they were asking, and the way in which other groups were asking.

Mr. Mitchell: That is not the gist of it.

Mr. Chairman: No, my memory says otherwise, Mr. Philip. I think he said no, no matter what they were against this bill. They, in fact, invited the members of the committee to vote against it, if I am not--

Mr. Hilton: And have the bill withdrawn.

Mr. Chairman: I believe that was the tenor of his remarks.

Mr. Breithaupt: I would go so far as to say that is what it says in exhibit 6. CIRPA can do a more effective job, as it says on the first page. On the second page it says, "We would urge you to kill Bill 68."

Mr. Wainberg: That is basically what the coalition is saying too. It demands that Bill 68 be withdrawn and that a new police complaints bill be introduced.

Mr. Hilton: Therefore, the amendments that you have thoughtfully suggested are not sufficient for you.

Mr. Wainberg: The amendments would be so substantial that you would have to go back to square one and redraft the bill.

There are so many procedural wrinkles that would have to be ironed out that it would be very difficult to repair it.

3:10 p.m.

Mr. Hilton: I just want to understand the brief of the organization that you are representing now, because you are also here listed on this document as the interim chairperson of CIRPA.

Mr. Wainberg: That is correct.

Mr. Hilton: Are you still the interim chairperson?

Mr. Wainberg: Yes, I am.

Mr. Hilton: What you are really seeking then is a complete withdrawal of the bill?

Mr. Wainberg: What we would like is a better bill, and certainly CIRPA's position--I am not here on behalf of CIRPA--is that if the bill were improved then we would use the public complaints commissioner.

I have discussed this with Sid Linden; he does not see any conflict between his office and CIRPA, and he would like CIRPA to refer people to him. CIRPA would be quite happy to do that if Bill 68 were adequate.

Mr. Hilton: But your view, so far as Bill 68 is concerned, is you want it withdrawn.

Mr. Wainberg: And replaced.

Mr. Mitchell: I just have one question, Mr. Chairman, so I will be very brief.

Your demand number two is that police officers be given no greater procedural protection than doctors, lawyers, or other professionals against whom complaints are made by members of the public. In a brief to be presented this afternoon, after yours, a comment is made by someone who says the judges' council investigates judges, the law society investigates lawyers, and the College of Physicians and Surgeons investigates doctors. When it becomes apparent that the initial investigation is suspect, it becomes necessary to bring in another governing authority. That is where they would bring in the Health Disciplines Board.

Similarly, with the police when things are suspect the Ontario Police Commission is brought in, so how is item two in contradiction to what happens today?

Mr. Wainberg: We are dealing with 2(b). You are saying that if police officers are going to be treated like doctors, and lawyers, and so on.

Mr. Mitchell: Because I have just read you what is in another brief which acknowledges that other groups do police themselves; there is an ultimate final authority if something is suspect, in the case of doctors such as the Health Disciplines Board. Similarly, there is the Ontario Police Commission, and I stand to be corrected, but there is the Ontario Police Commission if something is suspect in the police situation. So in your item 2, is there not some contradiction there?

Mr. Wainberg: I will deal with the lawyer situation. There are two points I would like to make.

First of all, with respect to doctors, I have dealt with the College of Physicians and Surgeons, and it is very frustrating. I think it is unsatisfactory to have doctors investigating doctors, and I am not that convinced that lawyers should be investigating lawyers, either.

The other point is that I was spot audited--lawyers get spot audited all the time--and a bookkeeper or auditor, or somebody, hired by the law society, but not a lawyer, came to my office and said, "I want to see your books." She was not a lawyer. She had a financial background. So, by analogy, she was a civilian. She was a nonlawyer. She did the investigation, and that was appropriate.

Mr. Mitchell: At the same time, you have stated that the police should be given no more protection than the very lawyers, doctors and lawyers, and so on that you are talking about, as I referred you to the statement in another brief to be presented. I find that it is somewhat contradictory. I think the protection that you are talking about in there is what is currently in

existence. If there is a final resolution to be made, that is usually done under the Ontario Police Commission.

You have said yourself, give them the same protection, and no more, than doctors, lawyers, and other professionals, and that is where I have some--perhaps I misunderstand what you are saying but it strikes me what you are saying is defending what currently exists.

Mr. Wainberg: It is a good point, and the only trouble is that police investigating police does not work. Okay, you are right, there is an inconsistency, but it has not worked in Toronto.

Mr. Chairman: Mr. Laughren, do you wish a supplementary from your fellow, Mr. Philip?

Mr. Laughren: What can I say?

Mr. Philip: With the greatest of respect, it is not okay. The analogy just does not hold up.

Mr. Mitchell: I did not make the statement.

Mr. Philip: You did quote the statement as though it was yours.

Mr. Mitchell: I quoted from two. No, not as mine. I was very careful, Mr. Philip, to say they are statements of his brief and another brief to be presented this afternoon.

Mr. Philip: I am sorry, but I think if we examine Mr. Batchelor's brief later this afternoon, we will see that he is not that ill-informed about how some of the other professionals do operate.

Mr. Mitchell: I grant you he said that there are other people to carry it out.

Mr. Philip: If we take your analogy, the analogy that is being used, would you not agree there is a difference between a situation in which a police officer from the same department and the same city is investigating a co-police officer and that kind of situation, with a nurse who allegedly committed misconduct, where she would be investigated by the College of Nurses of Ontario, very unlikely someone from the same city, very unlikely, certainly absolutely improbable somebody from the same hospital who is her employer dealing with the investigation?

If you take the College of Nurses of Ontario example, it is much more analogous to what many of the groups coming before this committee are using, namely, that it would be a trained professional, trained in the kind of investigation that is required, investigating and having a very arm's length relationship with the person being investigated or the employer of that person being investigated, so the analogy just does not hold up.

Mr. Mitchell: Mr. Philip, you just made a comment that

if someone was investigating a nurse it would likely be a nurse from out of the area somewhere. It was already stated--I believe the deputy did and the Attorney General has said--in situations where things need to be resolved we bring in investigators from other areas. That was clearly stated here during the hearings, so you are not really saying anything different than I am.

Mr. Philip: I do not really care what the minister says. What I go by is what is in the bill and that is not in the bill.

Mr. Laughren: I like the brief and something triggered in my mind, the same way it triggered in Mr. Hilton's mind, I think--and I hope it was an isolated incident that our minds would trigger together on the same kind of thing.

Mr. Hilton: I hope not, Mr. Laughren.

Mr. Laughren: When you ended your comments with the remark that, "it is the same old system," the last words you used when you presented your brief, I wondered whether or not you feel we would be better off with the system that is there now as opposed to one that gives the appearance of a legitimate complaint system without it really being legitimate in your terms. Is that how you feel about this bill and about this kind of complaints procedure?

Mr. Wainberg: The old system had very bad public relations. I would say the existing bill is getting better public relations. I am not sure it is substantially better, and that is no offence to Mr. Linden, whom I respect. It may be better to have a system which is clearly bad than a bad system which has a gloss over it.

Mr. Laughren: I will not pursue it.

Mr. Elston: Just a very short question: I note with interest the composition of your group, the Ontario Federation of Labour and several other representative groups. I am wondering, in the development of your overall theories and your programs, were briefs submitted by each of these organization's representatives, or how was your collective decision arrived at?

Ms. Tator: Over a period of several months from the time the bill first came down--actually before the bill came down--we began to meet with representatives of all these groups and organizations. Together we appointed a subcommittee which drafted the first draft and then the second and the third.

Each time it was brought back to the coalition, there was a public coalition meeting, to which everybody was invited and presented. Each time the coalition responded with what they felt was right and what they felt needed to be changed. The subcommittee then went back and this final draft emerged.

Mr. Elston: This brief then has been presented to each member that is listed on the accompanying sheet of paper and has been endorsed by them, I presume, in one way or another?

Mr. Wainberg: This last draft, no, but the previous drafts have and there are no substantial changes.

Mr. Elston: I just wanted it to be clear to the members here that the people who are listed here share in the construction of your brief and share the feelings that have been expressed.

3:20 p.m.

Mr. MacQuarrie: I would like to commend Mr. Wainberg on his brief. It at least addressed the bill. I do not agree particularly with the manner in which it addressed the bill, but that is a difference of opinion, unlike one of his colleagues on CIRPA earlier who spent most of his appearance before the committee in a promotional effort for CIRPA and had very little direct comment on the bill.

Getting back to one of the circulars that were handed around this morning by a CIRPA representative, there was a sentence that was sort of inflammatory, to say the least, as far as the complaints bill is concerned, et cetera, that "Its main goal is to provide independent and effective assistance to people who have been harassed or brutalized by the police."

We have heard all sorts of briefs to date. We have had no concrete evidence or indication, of any sort whatsoever, that anyone has been harassed or brutalized by the police. Have you ever been brutalized or harassed by the police?

Mr. Wainberg: No, but many of my clients have. If you talk to any criminal lawyer, he can give you as many horror stories as you want.

Mr. MacQuarrie: Are we talking hearsay?

Mr. Wainberg: I am not in the police station; of course, it is hearsay.

Mr. MacQuarrie: So you really have no firsthand knowledge of any of this?

Mr. Wainberg: I have seen bruises. That is not hearsay.

Mr. MacQuarrie: I guess I have been around as many police stations as most and I possibly have seen the odd bruise, too, but it is a question of how the bruises were really caused.

Mr. Wainberg: Certainly, and that is what the public complaints commissioner will look into. Certainly the police are not doing an adequate job of investigating any complaints against their own officers.

Mr. MacQuarrie: We hear complaints about a bill in the abstract and then getting down to particulars, and the main area in connection with which the bill is directed, complaints against the police, I would like to see some specific instances, cases and situations. Everyone--

Mr. Wainberg: Call CIRPA.

Mr. Philip: On a point of order, Mr. Chairman: We had this come up yesterday and my colleague, Mr. Elston, spoke to it then. I do not think we are arguing whether we are going to have a pilot project or not. I think what we are talking about and what this delegation has talked about is what kind of a pilot project we are going to have.

That is the essence of the issue. I do not think any of us want to go back to 1955 or 1960. I think it is very naive of Mr. MacQuarrie to suggest that nothing has ever happened in Metropolitan Toronto. If nothing has ever happened, what are we here for?

Mr. Chairman: Where is the point of order?

Mr. Philip: The point of order, very simply, is that it is not the job of this committee to inquire into any alleged police wrongdoings. It is, rather, to deal with the bill and Mr. MacQuarrie's question was leading us into some kind of a police hunt or something like that and that is clearly not the job of this committee. Other groups have done that kind of investigative work and it was concluded by the Solicitor General that a bill of some form was needed.

Mr. MacQuarrie: Police has certainly been alluded to and I think one thing that most delegations have agreed to is that there is a high standard of policing in this community.

Mr. Chairman: That ends the questions.

Mr. Philip: I had some questions, Mr. Chairman.

Mr. Chairman: You not only did not get my eye, but you have been speaking before.

Mr. Philip: I only had a supplementary before.

Mr. Chairman: Your supplementaries sometimes are a lot longer than three other people's speeches. Could you make it fairly brief because we are a half hour late with our next witnesses?

Mr. Philip: I certainly would not want to delay a constituent of mine from appearing before the committee, which is what is going to happen next.

Yesterday, the minister stated, in talking about the visible minority groups, that, "My experience in talking to many hundreds"--do you know of one person from any visible minority group that the minister spoke to?

Mr. Wainberg: No. I am waiting for Mr. McMurtry to produce these real spokesmen who support his bill. He is suggesting they exist, but I have not seen them.

Mr. Hilton: May I answer that? At St. Michael and All

Angels Church last spring there was a group--the dinner was held there--of black persons and it was sold out. It was crammed out and was all in praise of Mr. McMurtry and what he was trying to do in this and other respects.

Mr. Philip: How many people were in attendance there?

Mr. Hilton: I would say several hundred.

Mr. Philip: How many people did Mr. McMurtry personally speak to about this bill on that occasion?

Mr. Hilton: I do not know how many, but they were there.

Mr. Philip: I suggest to you that, unless the man is gifted with tongues, which I do not think too many of us have experienced in the last few years, it was physically impossible for him, even at one dinner, to talk to hundreds of people about this bill in any kind of meaningful way.

Mr. Hilton: I would agree.

Mr. Wainberg: If I could respond to that, I think you have to draw a distinction between support for the idea of independent review of the police and support for this specific bill. Independent review of the police is a motherhood issue. Everybody supports it. Maybe the police do not, but everybody else does.

Mr. McMurtry was quoted on an earlier occasion as saying the vast majority of people support the idea of independent review of police. Certainly they do, but the nitty-gritty of the bill they do not support.

Mr. Philip: One last question. On page two, you state that every officer has a notebook in which daily appearances are recorded and you are worried that, if he knows about the investigation, deletions or other changes could be done. Is the notebook not the property of the crown? Or what is your understanding as to who owns that notebook? Because this has come up in another investigation before this committee. Whose property is the--

Mr. Wainberg: The officer carries it around on duty. I believe it is filed in his locker when he is finished and I believe his senior officers have access to that book. But I am not sure that--if the officer has to be informed of the complaint, it does not take long to go over that book and it does not take him long to talk to his fellow officer to make sure the notes coincide.

Certainly, notes do tend to coincide. As a lawyer who does criminal law, I have seen it over and over again that officers' notes do tend to coincide.

Mr. Philip: You know of no penalty then or offence that would be committed by altering the notebook of a police officer by

that officer himself. It would not be considered a record that is the property of the crown.

Mr. Wainberg: No. There is no offence unless he testifies in court that he did not make any alterations or deletions and they are always asked that by either the judge or the crown.

Mr. Philip: If he were to destroy it, there is no offence that he can be charged with.

Mr. Wainberg: I suppose if he destroyed it for the purpose of obstructing justice, he could be charged with obstructing justice.

Mr. Philip: It is an interesting point because we had somebody who was a public employee who--somehow his notebooks disappeared. Those were the kinds of questions we were asking at that time. It may be something this committee should look at in terms of that kind of documents.

You talk about the right to lay criminal charges of public mischief against the complainant simply for having made a complaint. Do you believe there should be any penalty built in for frivolous complaints or habitual complaints that are seen to be of a frivolous nature?

3:30 p.m.

Mr. Wainberg: No, because those complaints are not going to go anywhere. Certainly there will be a certain waste of time in investigating them. It is more important that the public have an outlet to express their disapproval of the police than that they be foreclosed from making that complaint. It is a harmless outlet and it is well worth while. It will certainly improve police-minority relations to have that outlet and not to have any sanctions, any penalties, for just laying a complaint.

Mr. Philip: You deal with the right to remain silent by the officer who is being investigated. In the next report before the committee, Mr. Batchelor points out that Mr. Justice Morand, in his report to the Metropolitan Toronto police department, dealt with the problem of officers assisting fellow officers to cover up wrongdoing. He says, "In so far as the problem relates to the covering of evidence to assist the fellow officer, the problem runs very deep indeed, and that is without question a feeling among many officers, particularly but not confined to the lower ranks, that it is wrong to give evidence that will reflect poorly on a fellow officer."

Do you feel that there should be any penalty built in for obstruction of the investigator by a co-officer or co-worker of the police officer who is being investigated?

Mr. Wainberg: There is a penalty built in. Section 16(5) reads, "No person shall obstruct the public complaints commissioner or a person appointed by him to make an investigation or withhold from him or conceal or destroy any books, papers,

documents or things related to the investigation." I think that is covered.

Mr. Philip: And the penalty for that is?

Mr. Wainberg: It is not high enough. You can't go to jail for it; it is just a fine. Section 25 sets it is a \$2,000 fine maximum. He should be able to go to jail. I think it is contempt. In any other kind of proceeding where there is contempt, there is jail available, and there is not in this. I think \$2,000 is a licence.

Mr. Philip: You have anticipated my next question. Thank you.

Mr. Chairman: Thank you very much, each of you, for appearing and for your time.

Mr. Wainberg: Thank you. You gave us a very full hearing.

Mr. Chairman: The next witness is Mr. Batchelor. You are not representing any organization but yourself, is that correct?

Mr. Batchelor: That is right, sir.

Mr. Philip: Let the record show, since Mr. Williams seemed to be interested this morning, that this gentleman is not a member of the New Democratic Party.

Mr. Batchelor: You may let the record also show that Mr. Philip has been trying to get me to be a member.

Mr. Philip: We try to sign up everybody in the riding. That is why we are so large.

Mr. Chairman: Carry on.

Mr. Batchelor: Mr. Chairman, ladies and gentlemen, our Solicitor General, Roy McMurtry, remarked several years ago that creating an independent civilian board to review complaints against police would indicate lack of trust in police, and could be likened to saying that there is no trust in the Ontario government because it is subject to investigation by the Ombudsman.

My response to Mr. McMurtry's contention is that if the bureaucrats staffing the offices of the provincial government were not so indifferent to the needs of the citizens of Ontario, there would not be the need for the office of the Ombudsman.

Mr. Laughren: You should have signed him up, Ed.

Mr. Batchelor: I am constantly hearing statements that our police in Toronto are our finest, and yet I am mindful of the fact that up to recently, Metro police have shot and killed eight people in almost that many months; whereas in New York City, the police there have been involved in 400 hostage-taking incidents and not one life was lost.

Mr. Hilton: I personally would challenge that statement of eight killed. That is not a fact.

Mr. Batchelor: Are you saying more?

Mr. Hilton: In eight months, no.

Mr. Batchelor: Have eight people been killed recently?

Mr. Hilton: Not in eight months.

Mr. Mitchell: May I also interject, Mr. Chairman? A statement like that is somewhat inappropriate because it does not indicate at all the lives of police officers that have been taken in serving the role they saw necessary to do for society's safety.

Mr. Hilton: Albert Johnson was the last person who was killed, sir, and that was nearly two years ago.

Mr. Batchelor: It is true that corruption is nonexistent for the most part, but to suggest that police officers in Metro Toronto do not harass, brutalize or frame citizens is to display a lack of knowledge of such matters. The problem between the police and the citizens stems from the "them and us" attitude which prevails on both sides.

The typical policeman feels he cannot count too much on the average citizen to help him, nor does he wish to associate too closely with the general public. He believes the general public is only mildly sympathetic to him and that his limited source of goodwill is drying up. He expects to be confronted with hostile citizens who do not appreciate his efforts and do not agree with the laws the policeman is hired to enforce.

The majority of policemen in Metropolitan Toronto are a younger breed than they were years ago, and consequently they do not possess the maturity to handle complex situations which require the experience of a seasoned individual. For example, a young officer who, along with another, is called to the scene of a domestic dispute, faces a couple who have had the experience of married life for 20 years, something the young officer has not shared. Sometimes when the young officer is told under these circumstances that he does not know what he is talking about, he becomes angry and words grow into physical confrontation.

What started as a domestic argument ends up as a criminal case involving the charge of obstructing police. It is then that the complaint is filed and that a young officer wonders why he joined the force in the first place.

I am mindful of the problems of police officers and their rightful need to be respected, but at the same time I am aware of the existence of bad police officers and the need to fire them, and in some cases, to prosecute them. That, unfortunately, is where the police department has failed miserably. There is no doubt in my mind that the citizens' complaint bureau has been failure. If it had not been a failure, there would not be the need to create a police complaints board, the subject of Bill 68.

If one asks where is the failure, the answer stems from the concept that police officers should not investigate each other's wrongdoings. This does not imply that persons of the same profession should not investigate fellow members. The judges' council investigates judges, the law society investigates lawyers and the college of physicians and surgeons investigates doctors. But, when it becomes apparent that the initial investigation is suspect, it becomes necessary to bring it to another governing authority. Hence the college of physicians and surgeons, like similar colleges, is subject to review by the health disciplines board.

There is a public belief that when the police investigate themselves, they cannot be fair and impartial. Criminal lawyers, and rightly so, would prefer a civilian investigation, and so do many members of the general public. There is good reason for this preference. When the police do the investigating, even where justice is done, it is not clearly seen to be done; and no amount of civilian review after the fact can change that perception. For if the civilian review results in a finding that differs from that of the police investigation, the belief in the the coverup will prevail. Only by calling in skilled investigators will a possible coverup be put to rest.

There are people who will say that this casts aspersions on the integrity of the Metro police. It is true. The aspersions are quite clear. The police cannot be trusted to handle the investigations honestly. I wish to refer you to a case with which I am very familiar.

Not too many years ago, a young woman in her 20s was driving home in the early hours of the morning. She observed a police car pulling alongside and motioning her to pull over. This she did. They demanded identification. She asked why. Suddenly she was dragged out of her car and accidentally dropped on her head, when, it was learned later, she suffered a concussion. In her panic, she fought with the officers. Incidentally, she weighed 110 pounds and was less than five foot six. I do not suppose the fight will go down in the annals of history as one that was evenly matched.

She was taken to a police station and charged with driving while impaired, despite the fact that the breathalyser operator concluded that he did not have enough evidence of any excess alcohol in her system to merit any charge. The court later learned from a forensic scientist that the only drugs she had in her system were minute quantities of Aspirin and antihistamine. That certainly would not constitute impairment, but a blow to the back of the head certainly would.

When she complained to the desk sergeant that she had been assaulted by the two arresting officers, they immediately charged her with common assault. She was thrown into a cell and five hours later was looked at by the matron with a view to releasing her. She concluded that the girl was still too groggy to release and she was not released until several hours later.

Meanwhile the girl complained of pain in her head, but her complaints were ignored. After all, it was not as if her head was

split open. The police at this station were indifferent to regulation V(2)(16) of the Metro police force, which clearly states that anyone in acute distress from injury should be taken to the hospital immediately.

The girl was finally released and went to where her car was impounded, and after driving no more than a few miles towards her home, she suddenly passed out at the wheel. She smashed into a vehicle ahead of her which, as luck would have it, was occupied by a nurse. The nurse took one look at the young woman and called the fire department, who came and administered oxygen.

It was not until several hours later that I heard from this young woman who, in tears, asked me for help. I took her to the hospital and convinced her that she should complain to the citizens' complaint bureau, but on the understanding that I would be present at all times while she was being interviewed.

3:40 p.m.

On August 15, 1978, I telephoned Superintendent Dixon of the bureau and he promised me that someone from his office would contact me to arrange an interview between an investigator and the complainant. Approximately one hour later, I received a frantic call from the young woman that a Sergeant Chambers from the complaint bureau was at her door. I spoke with this man on the phone and he told me it wasn't necessary for me to be present. I told him not to interview her until I arrived, but when I got there he had already started questioning her.

He was trying to get her to press charges and admitted that if she did, the citizens' complaint bureau would be off the case. I told her to refuse to lay a charge until the bureau had completed their investigation. I was extremely angry at Chambers for visiting the girl without first arranging the visit with me. The girl went into hysterics when she first saw him, a fact later confirmed by Chambers.

The Attorney General arranged a meeting between Staff Superintendent Marks, now a deputy chief, Superintendent Dixon and myself. The latter officer stated that he instructed Chambers not to visit the girl prior to calling me. What we had here was a member of the complaints bureau disobeying his superior and refusing to honour the request of the complainant's agent. One is forced to ask why.

I should also point out that the complainant's girlfriend began receiving strange phone calls from a man. The man said he got her phone number from another male friend of the complainant while in a bar on Gerrard Street. The man referred to the complainant as "Mary." He asked if Mary ever played soccer and if she had ever hurt herself playing sports.

How amateurish--can you imagine a police officer trying to set the complainant up without first checking her background? He knew that her first name was Mary and he presumed that she had been drinking at a bar on Gerrard Street with a man. Well, it's true that her first name was Mary, but she hated that name and had

been called Terry for over 10 years. No one ever called her Mary except the police who arrested her. She had never been in a bar on Gerrard Street and she wouldn't know any male friends who frequent bars because she is a lesbian. After I spoke with Marks and Dixon the calls ceased.

If you are wondering where the police got the phone number of the girlfriend of the complainant, let me tell you. After she was arrested, the police went to the address listed on the complainant's driver's licence and asked for, among other things, the phone number. It was the phone number of the girlfriend. There is no doubt in my mind that the police department suspected there was a possible lawsuit in the making and were protecting their posteriors against future court action.

Chambers conducted his so-called investigation into her allegations sloppily. He never felt the bump on the back of the complainant's head, although he had been asked to. He later concluded she got the bump on her head from the collision she had later in the day. Had he taken the time to examine her car, he would have realized that her headrest was made of foam rubber. One simply doesn't get a goose egg at the back of one's head by hitting a headrest made of foam rubber; nor does one get a bump at the back of the head when the collision propels the head forward. She was also buckled in, according to witnesses, who Chambers didn't bother to interview.

He further told the complainant he had learned that there had been an unusual drug found in her system. Since when is Aspirin and an antihistamine considered unusual? He accused her of lying when she said she had only been given one breathalyser test. Had he spoken with the breathalyser operator, he would have learned that she was telling the truth. This means, of course, it was Chambers who was lying.

Later at her trial, Chambers sat with the arresting officers and talked with the assistant crown handling the case. It is very improper for a member of the complaints bureau to be doing that, let alone be seen doing it by the complainant. I sent a letter to Chief Adamson complaining about Sergeant Chambers. The reply, from Staff Superintendent Ward, said, "The manner in which this investigation was carried out by Staff Sergeant William Chambers has been reviewed and I can find no evidence of any improper action in his part."

We now have it from no less a personage than the executive officer that no impropriety is committed when an investigator form the citizens' complaints bureau disobeys his superior by visiting a complainant against her wishes; when he refuses to examine an injury to the complainant's head; when he lies to the complainant and her lawyer about unusual drugs being found in her system; when he doesn't interview witnesses to the accident; and when he says he can't find any record of the arresting officer's call through to the radio room to get rid of two witnesses who saw the original assault, even though the radio room records all such calls.

With proof of the existence of a complaining cab driver, the girl would have been able to sue for damages as a result of her

being stopped in the first place, as it is illegal for an officer to indiscriminately pull motorists over just to look at their drivers' licences. Despite cases like this one, we are constantly hearing arguments by the apologists for the Metro police force that only police officers are qualified to investigate cases of wrongdoing.

The members of this committee might find it interesting to learn that many private investigation agencies in Ontario simply will not hire a former police officer as an investigator. The experiences of several agencies I personally am aware of are that former police officers simply do not make good investigators.

As one who spent many years as a private investigator, I have worked on cases that had been turned over originally to the police. Several of the homicide cases I worked on were not solved by the police by the time I got the case because of their heavy work load. In some cases, some vital witnesses were completely ignored. In other cases, the witnesses were too antagonistic towards the police to co-operate. It took outsiders such as myself to convince them to co-operate.

I wish to cite another case in which the indifference of police stand out and where the investigation into police wrongdoing was a sham. In April of 1978, I was photographing a large fire in Oakville for a newspaper when I was ordered by a police officer named Thomas Sinkovich to leave the area. When he demanded that I show him some form of identification--

Mr. Hilton: Was he a member of the Toronto force?

Mr. Batchelor: He was kicked off the Toronto force.

Mr. Hilton: But at this time when you were photographing this in Oakville?

Mr. Batchelor: No, he was with the Halton regional police.

When he demanded that I show him some form of identification, I refused on the grounds that my civil rights would be infringed upon since I had committed no crime. He threatened to arrest me and charge me with obstructing a police officer if I didn't comply, so I showed him some letters addressed to me as a syndicated columnist care of the Toronto Sun. He insisted on proper ID, so I showed him my private investigator's licence.

Later in the evening, I went to the police station and filed a complaint of assault--he grabbed me by the arm--and harassment, the latter as a result of him demanding identification when he had no authority to do so.

When he returned to the station, he was informed that I had filed a complaint against him. Several years later, it was learned that he was suspected of having actually read the complaint as it was left on the sergeant's desk. He charged me with obstructing

police for supposedly refusing to leave the area in the direction he ordered me to.

The trial, which took place the following year, was the longest trial in Canadian jurisprudence dealing with the charge of obstruct police. It lasted from January 1979 till June 1979, the trial taking place one day each month for five months.

The Crown spent thousands of dollars conducting the trial, bringing in witnesses from the Ontario fire marshal's office, the fire chief for Oakville, an inspector from the police department. My own defence cost me \$10,000, bringing in witnesses who were in the area at the time and a superintendent from the Metropolitan Toronto police force.

Keeping in mind that the offence supposedly committed was that I was walking down a street towards my car, this police officer supposedly ordered me not to walk towards my car and I denied his allegations.

The issue before the court was whether or not a police officer could order a citizen to refrain from doing a certain thing even though the citizen wasn't breaking any federal, provincial or municipal laws by doing that thing.

From the very onset I had maintained that I had been framed by a police officer who, after reading my complaint, decided to charge me with an offence to get even. Every police officer knows that when he is going to charge a citizen with an offence he must get his name, age, address and write this information in his notebook and that such notations must be in the proper sequence. It was discovered at my trial that the officer made no such entries in his notebook.

The question begs an answer when you ask, "Where did this officer get all the pertinent information to lay a charge?" The answer was obvious--the complaint form. But at the trial the officer swore under oath that he had never seen the complaint form. He testified that he got my date of birth from my private investigator's licence. The licence doesn't show the investigator's date of birth.

Later the police department was told that the registrar's office of private investigators did not give such information to Sinkovich. Further, they close at 5 p.m. and he wrote up his report after 9 p.m. He never could explain where he got my date of birth. He finally said he didn't know where he got it.

He also stated he got the address 165 Dundas Street West, Mississauga, from a letter I pulled out of my pocket. Later the police did speak with the post office and were advised that it would have been impossible for a letter to be delivered to me with just that address on it as it is a large office building.

That address was listed on my complaint form as my place of employment and even I didn't know the address and had to check with the phone book because I had just started the job a few days earlier.

He put in his police report that I disobeyed him at 6:45 p.m. That, by coincidence, was the same time I had entered in the complaint form. He also told the court that no one was permitted to enter the area, and yet the court heard testimony that newsmen were crawling all over the place, that a Salvation Army major and his teenagers were permitted to enter the area by this same officer, and the court also heard other officers admit that they permitted me and others into the area. Armed with this new information, I asked for an investigation into this officer's conduct.

During the first week of September this year, I was notified of the police department's finding after a two-month investigation. Let me read you the pertinent paragraph which gives its findings, as written up by Inspector Wilkinson of the Halton regional police. It says in part:

"It is my opinion that the complaints lodged by Mr. Batchelor on July 3, 1981, are the same as those which have been disposed of by Staff Sergeant Stasiuk and Inspector Currie. I cannot find any basis to reopen the investigations."

This inspector admitted to me in a tape-recorded conversation that he believed me and that there were some strange things about this case, but that he wouldn't investigate the matter any further. He admitted to me that he didn't look at the officer's notebook, that it was conceivable that Sinkovich could have seen my written complaint, and that very few persons were actually interviewed. In fact, he was more interested in speaking with a crown attorney who wasn't even on the case than actual witnesses.

The other two investigations he spoke of were nonexistent. The first one didn't even begin but when it became apparent that I didn't wish to speak with any investigating officer, my reason was obvious. He told me he would hang up in my ear if I asked him another question like the first one, that one being, "Did Sinkovich charge me after reading my complaint?"

3:50 p.m.

The second investigator was an Inspector Currie, who spent most of his time interviewing the assistant crown attorney handling the case. He concluded that he was not pleased with the antics of my lawyer and myself because we were late and my lawyer asked irrelevant questions. Other than acquire parts of the transcript, Inspector Currie did not conduct an investigation into my allegations that Sinkovich had framed me by charging me and then lying in court to substantiate his charge.

There were many questions left unanswered by the investigators in the complaint bureau of the Halton regional police. The epitome of the obvious coverup came in the first week of September when, after being informed by Inspector Wilkinson that they had just acquired a polygraph and an able operator to conduct tests, he denied me the opportunity to be tested so that I could prove my innocence and at the same time prove that I was telling the truth when I said I did not pull a letter from my

pocket giving the address of 165 Dundas Street West, Mississauga.

There is another interesting case to consider when looking into the investigations of police brutality as conducted by police officers. On May 29, 1979, a number of police officers from Toronto, Ontario Provincial Police intelligence and Peel region entered the Mississauga home of a private investigator and after searching his home, he was taken to a police station in northern Toronto where he alleged that a beating was administered to him. He was also threatened with being framed for a murder he did not commit unless he gave them information about the activities of his former employer.

He filed complaints to the Toronto police department, the OPP and the Peel regional police department. The complainant was never interviewed, neither were his witnesses nor family. He offered to take a polygraph test as such equipment was used at the Peel regional police headquarters, but his offer was refused. He later took such a test elsewhere, the test being given by a well respected authority on the use of polygraphs; and subsequently it was determined that he was telling the truth when he claimed brutality and threats of being framed.

It is also interesting to note that his so-called confession, obtained when beaten, was not even entered by the crown at his trial. Obviously the crown knew it would never pass muster at the voir dire. He later did hear from one of the police departments the results of his complaint. Peel regional police called him to their offices and told him they did not believe him.

I have given this committee particulars of these three cases because I have possessed the information first hand and also because there are members of this committee who are also aware of the circumstances of some or all these cases.

I think Alan Borovoy, the general counsel to the Canadian Civil Liberties Association, summed it up correctly when he said: "Metro police will never gain the full trust of the public until they turn over power to investigate complaints against them to an independent civilian review board. No matter how fair the investigation is in fact, it simply does not appear fair. The police will always be vulnerable to the suspicion they are covering up."

Bill Allen, a special assistant to Attorney General Roy McMurtry, has gone on record as saying: "The existing police complaint bureau staffed entirely by Metro police officers has failed to win confidence of minority groups. It has been totally discredited."

As things now stand, when someone makes a complaint, it is totally in police hands. Three or four months later the person gets a cryptic telephone call or a three- or four-line letter saying: "The complaint is unfounded. Thank you very much and goodbye."

One of the greatest dangers that a citizen encounters by

laying a complaint is that he will be subsequently charged with an offence. In the case involving Mary P., she was charged with common assault as soon as she said she wanted to complain against the arresting officers for the manner in which they dragged her out of her car.

In my own case, I was charged after having complained against the officer who demanded ID when he had no such authority. In the William N. case, he was charged after he filed his complaints about being beaten and threatened.

Mark Wainberg, a lawyer with the Citizens' Independent Review of Police Activities committee, pointed out the risks of complaining to police about wrongdoings by police when he said, "Too many people have been charged by the police with public mischief or sued in civil court after they have had the temerity to complain to the police about the police."

Experience tells us that the people who are in need of protection from police abuse--members of minority racial and ethnic groups, the impoverished and powerless, the criminals and ex-convicts and the members of the homosexual community--are the least likely to complain to a police officer about the actions of another because of their fears of reprisal. Subsequently, the complaint bureau is something they avoid in the same manner that swimmers avoid shark-infested waters.

In a book titled *The Democratic Policeman*, George Berkley, a sociologist in the United States, said this about police policing themselves: "Internal control systems of democratic police forces should meet three general criteria. First, they must, of course, work impartially and efficiently, dealing with abuses promptly and rigorously. At the same time, they must safeguard the rights of those accused. Second, the internal control system should be fully open to the larger society. In other words, it should facilitate and even stimulate the inflow of complaints from the general public. Finally, the operations of the control system should have the maximum visibility. The public, and most especially a complainant, should be able to see its operation and gauge its effectiveness."

Berkley's first criterion dealing with impartiality is, of course, what Bill 68 is all about. The difficulty honest police investigators have to contend with is the secretiveness prevalent amongst fellow officers. August Vollmer, one of the pioneers in American police reform, noted in 1930, "It is an unwritten law in police departments that police officers must never testify against their brother officers."

Professor Herman Goldstein of the University of Wisconsin said in 1967, and I quote: "The persons most likely to witness police actions are other police officers. But when such actions are challenged, the fraternal spirit that binds all law enforcement officers usually results in the witnesses supporting the position of the accused officer, whatever his position may be, or results in their claiming a lack of sufficient knowledge."

Claude L. Vincent, a professor at the University of Windsor,

stated in his book, Policemen, and I quote: "The use of force is an accepted and integral part of police work. They will use it when necessary. They have come to expect a certain amount of violence on their jobs, and they are reticent to report fellow policemen who are brutal or show excessive use of force because they do not want to be labelled stool pigeons."

Justice Morand, in his report on the Metropolitan Toronto police department, dealt with the problem of officers assisting fellow officers to cover up wrongdoings. He said on page 137 of his report, and I quote: "In so far as the problem relates to the colouring of evidence to assist a fellow officer, the problem runs very deep indeed. There is, without question, a feeling amongst many officers, particularly but not confined to the lower ranks, that it is wrong to give evidence that will reflect poorly on a fellow officer."

The average citizen is reluctant to complain against a police officer for fear of being charged with public mischief. The complainant knows that if he will not be believed, he risks going to jail.

Justice Morand in his report pointed out the probabilities of not being believed when he said, and I quote from page 123, "There is a natural tendency among judges, as among the public generally, to accept the sworn testimony of a police officer, particularly when it contradicts the words of a person whose credibility is suspect by the very reason of his involvement with the law."

Justice Morand further in his report expressed his concern about Metro police officers in this light by saying, and I quote, "It is with considerable regret that I am bound to report that one of the most disturbing things which came out of the hearings was the extent to which I found the evidence of police officers mistaken, shaded, deliberately misleading, changed to alter the circumstances and sometimes entirely and deliberately false."

Justice Morand expressed what criminal lawyers, ordinary citizens and persons accused of crimes they have not committed, have always known. There are a great number of police officers who perjure themselves in court in some capacity every day of the court's calendar. If it came as a surprise to Justice Morand, then he has missed much in his extensive legal background.

If in the aforementioned, I have tried to portray Metro police officers as conniving liars, then I am sorry. My aim is to point out to you that a great many of the police officers in the Metro Toronto police are conniving liars. There are also a great many more police officers in the force who are dedicated and honest police officers. But then Bill 68 was not created for them. The bill was not even created because some Metro police officers lie. It was created because even the complaints bureau cannot be trusted.

Justice Morand made that observation in his report on page 184 when he said in part: "The present system is not effective. For a variety of reasons the investigation of serious allegations

of excessive force are incomplete, not impartial and largely unsupervised."

He went on to comment on the officers in the bureau when he said, and I quote, "I was not impressed with the calibre of some of the officers assigned to the complaint bureau who appeared before me."

Up to this point in my brief I have attempted to point out that the police cannot be trusted to investigate themselves. My views are in complete opposition to those of Metro Chief Jack Ackroyd. He said at a public meeting, and I quote: "There is no place in North America that civilian investigation of complaints against police has ever worked. Why assume it can work here? Civilians are unskilled in making investigations. Police officers, generally a suspicious lot, are likely to stonewall a civilian investigator."

Let me respond to those remarks of Chief Ackroyd. Chicago has a civilian review board called the office of professional standards and the board has been in operation since 1974. It fields complaints by phone, mail and from people who walk in, at the staggering rate of one million a year. Its office is open 24 hours a day where the public can lodge complaints of any kind. However, the OPS investigates only investigations of excessive force and refers all other complaints to the police department's internal affairs department.

The Chicago plan has proved highly successful and authorities say that the OPS, which pioneered the use of civilians for police behaviour review, has served as a model for several cities in the United States and also in Europe and Japan.

The OPS plan differs with the one conceived in Bill 68 in that the chief administrator of OPS reports his findings to the superintendent of police, the most serious cases going directly to the Chicago police board.

You may recall that Chief Ackroyd stated that civilians are unskilled in making investigations. Who did he think would be hired as civilian investigators? Drunks, teenagers, bikers? I have never heard a statement by any police officer as ridiculous as Chief Ackroyd's statement re his opinion of civilian investigators.

There are thousands of citizens in this country who are more than qualified to act as investigators. For example, former intelligence officers in the armed services, retired police officers, private investigators, insurance investigators, investigative reporters, just to name a few.

4 p.m.

In Chicago, the civilian investigators are, for the most part, college graduates and they all undergo training in investigative techniques at the police training academy. I think if civilian investigators in Toronto were given such similar training at the police college here in Ontario, their training

should be sufficient for the purpose of investigating police complaints.

Chief Ackroyd's comment about his police officers stonewalling any civilian investigator's investigation is indeed most disturbing to hear. Carol Tator, the chairman of the Urban Alliance on Race Relations, had a suitable response to that remark of Chief Ackroyd about stonewalling when she said, "Officers who won't tolerate civilian investigators can hardly be trusted to investigate misconduct by fellow officers."

At this point in my brief I wish to go directly to my criticisms of Bill 68. I refer you to page four, section 9(4). It says, "Where an investigation has been completed, the person in charge of the bureau shall cause a final investigation report to be prepared and shall forward a copy thereof to the public complaints commissioner, the chief of police, the person who made the complaint and the police officer concerned."

My concern is the thoroughness of the report. I do not feel that two or three liners are satisfactory. In the report sent to Chief Harding of the Halton regional police re my case, the entire page, with the exception of three lines at the bottom of the page, merely recapped my allegations. There was nothing in the report that told how the investigations were conducted, who was questioned, what conclusions were arrived at after each interview. When I discussed this aspect of section 8 with Superintendent Dixon of the Metropolitan Toronto police, a month or so ago, he pointed out that some witnesses wished to remain anonymous, such witnesses as neighbours.

I do not think that anyone who discusses a matter during an investigation has the right to remain anonymous. If the neighbour says he saw a murder being committed, he cannot remain anonymous throughout the trial any more than a neighbour who says the complainant is lying when he claims police brutality. He may not wish to say anything but as soon as he opens his mouth, his words should be subject to scrutiny by all concerned.

Dixon says that the psychiatrist of the complainant may disclose some undesirable trait of the complainant and therefore wish to remain anonymous. The psychiatrist cannot disclose anything to an investigator without the authorization of his patient and you can be sure that if the patient and his or her psychiatrist cannot agree on what is to be disclosed, that is where the information will remain--undisclosed.

Paragraph (b) of subsection 5 of section 9 says, "contain a summary of the investigation, and of information obtained from the person who made the complaint, the police officer concerned, and witnesses, if any." This portion of Bill 68 is in my opinion an extremely important part of the bill. It is in this summary as described in the bill that everyone from the complainant to the chairman of the police complaints board finally learn the truth or what has been botched in the police investigation.

It would appear from paragraph (b) that the police investigators are to interview the complainant, police officers

concerned, and witnesses, if any. I wish to deal with the part dealing with witnesses. According to the dictionary definition of the word "witness," as defined by Gage's Canadian dictionary, it means, "A person who saw something happen." In my opinion, this is what I believe the draftsmen of Bill 68 intended "witnesses, if any" to mean.

But there are other kinds of witnesses to interview. For example, in the Mary P. case, Sergeant Chambers could have interviewed the doctor who examined her. As it was, he didn't.

In fact, later at her trial, the officer had to ask the crown who the doctor was. He could have interviewed the breathalyser operator who concluded that she was not drunk but suffering from some other form of impairment. Had he done so, he would not have called Mary P. a liar when she claimed she was only given one test and not two. He could have interviewed the forensic scientist who was called upon to testify as to the Aspirin and antihistamine in her system. Had he done that, he wouldn't have told her lawyer that she had an unusual drug in her system.

The only thing that could be said about this officer's investigation is that at best, it was bungled and at worst, it was dishonest. If the investigator was honest and professional as an investigator, he would have interviewed the witnesses who did not see anything happen but could shed some light on the case. He would have listened to the tapes made at the time of the call into the radio room by the arresting officers in which they asked for help to chase away witnesses who were following them. From that, he could have traced them by their licence plates and then interviewed them.

I believe it is extremely important in this aspect of the bill that it clearly point out what is expected in the summary. I do not like the word "summary" being used in that part of the bill. Gage's Canadian dictionary defines "summary" to mean "brief statement giving the main points." One of the greatest potential abuses in this bill can be in the final investigative report's summary and the police department's interpretation of the word "summary." The summary can be so brief that nothing conclusive can be gleaned from it.

I strongly urge this committee to recommend the replacement of paragraph (b) with one that will clearly instruct the person in charge of the public complaints investigation bureau file a full and comprehensive investigative report to all persons concerned. That report should name all witnesses and state what they claim they saw and heard. It is only then that the complainant and the commissioner of the board can really determine if a proper investigation was conducted.

In subsection 3 of section 9, it says in part, "Notwithstanding subsection 2, the person in charge of the bureau may decide not to make a report to the person who made the complaint and the police officer concerned where, in his opinion, to do so may adversely affect the investigation of the complaint..."

I can't picture a situation where notifying the complainant of the particulars of the interim report would adversely affect the investigation, but if such a situation should arise, how would the complainant be advised that he is not to be given the interim report?

That part of the section states that the person in charge of the bureau shall advise the commissioner of the board as to why he has chosen not to give an interim report to the complainant, but it does not say anywhere whether the commissioner is obliged to give the reasons for the denial to the complainant. I think a complainant has a right to know so that he can decide whether or not an injustice is being done to him. To deny him a reason is to deny him justice and would clearly convince him there is going to be a coverup of the wrong done to him.

I refer you to section 8(4). It says, "No reference shall be made in the personal record of a police officer to a complaint resolved under this section, except where misconduct has been admitted by the police officer." This part of section 8 makes little sense when you study it more closely. First of all, it talks about a complaint being "resolved." Gage's Canadian Dictionary describes "resolved" as meaning "determined," and the word "determined" means "put an end to."

Just what do the draftsmen mean when they speak of a complaint as being resolved? Do they mean that the complainant has withdrawn his complaint? Do they mean that the police officer has apologized for his behaviour?

Section 8(1) of the bill gives the person in charge of bureau the opportunity to try to resolve the complaint. I think it is important that we understand what he is expected to do to resolve a complaint. Let me give you an example of a complaint that was resolved. Last summer, I photographed a parking control officer parking his car in a prohibited area. When he saw me, he pulled his car alongside of mine and refused to let me drive away unless I explained to him who I was and why I was photographing him. He had no authority to prohibit me from driving away, nor did he have authority to demand my name. I complained to the inspector in his division who assured me that this parking control officer would be straightened out as to just what he could and couldn't do in dealing with citizens. In my opinion, the matter was resolved as soon as he spoke to the offending PCO. I could have laid a formal complaint and sued him and the police department for false imprisonment because he hemmed me in but I chose to deal with this officious oaf in an informal way.

Now suppose he denied everything. It wouldn't alter the fact there had been a complaint. And supposed that 20 citizens complained about this man and he denied every allegation. It wouldn't mean that 20 citizens had not complained. Yet, according to this bill, as long as the 20 complaints were resolved informally, and he denied every allegation, there would be no reference made in his personal record.

On the other hand, supposing another officer insulted someone and that person complained. And let us suppose that the

officer admitted he insulted the complainant but he apologized. He would have this incident put into his personal record because he was man enough to admit his insulting behaviour. Surely the police department should be more concerned about the employee who has 20 complaints that were resolved than the police officer who only had one complaint. Unfortunately, the department would have no record of the 20 complaints that were resolved because the officer denied the 20 allegations.

This subsection used the word "misconduct." Gage's Canadian Dictionary defines it to mean "bad behaviour." This could mean anything from rudeness to criminal conduct. It is unlikely that a citizen would settle for criminal behaviour being resolved informally. Yet, there is nothing in this section that says the bureau chief must not attempt to resolve complaints involving criminal behaviour. Some citizens who are assaulted may be coerced into having this kind of behaviour resolved informally and subsequently there is a danger of police officers not being properly disciplined because of the wording of this section.

I believe that the section must be more explicit and spell out what constitutes misconduct that can be resolved informally. This does not mean that the bureau chief cannot or should not attempt to get to the truth of the allegation, but I think that when the allegation is about any form of physical assault, the matter is beyond the scope of an informal resolution. It matters not whether the officer admits the allegation or denies it, it should be moved on to a formal investigation. I think that complaints involving rudeness and indifference can be resolved informally but more serious allegations must be dealt with more formally.

When studying this subsection more closely, you can see the contradiction. It says that unless the misconduct is admitted to by the officer, there will be no record of his misconduct entered into his personal record. In reading the words of this subsection, I am compelled to ask, "How can a complaint be resolved if the officer denies the allegation?" I believe the wording should be changed to read, "No reference shall be made in the personal record of a police officer to a complaint resolved under this section if, to the satisfaction of the complainant, no misconduct was committed by the police officer." There may be circumstances in which the officer acted quite correctly but the complainant was unaware of this fact. Once he is aware of this fact, the complaint can be resolved informally.

Chief Ackroyd has gone on record as stating that if a policeman receives too many complaints, even if they cannot be substantiated, he is counselled. One officer, according to Superintendent Dixon of the complaints bureau, was counselled because he had several complaints about calling motorists "buddy" when he handed them tickets. Obviously, the matter could be resolved informally, but if the officer denied the allegations and the allegations were uncorroborated, there would still be some record somewhere because, according to Chief Ackroyd, such officers are counselled.

4:10 p.m

Obviously, any complaint resolved, whether admitted to or not, should be recorded in the policeman's personal record. Why should they be different from the citizen on the street? If a citizen is charged with an offence and the case is dismissed, you can be sure that it is not struck from his police file.

I refer you now to section 10(1) which says, "The chief of police shall review a final investigation report and he may order further investigation as he considers advisable and may, unless he decides that no action is warranted..." and it carries on.

It is the word "decides" that I take issue with. Although he can make a decision in the matter of choosing one or more options open to him, I believe the word "decides" should be replaced with the word "concludes." The fact that he can decide that no action is warranted only implies that he can make a decision right or wrong regardless whether or not he has reached a conclusion. By replacing the word "decides" with "concludes," it implies the decision is based on his conclusion and not merely on his right to make the decision.

You will note that nowhere in section 10 is there any mention of the right of the complainant to appeal the decision of the chief of police should the latter choose to take no action whatever against the police officer in question. For example, paragraph (b) says he can refer the matter to the board, but what happens if he decides that no action is warranted? Subsection 3 says that if the chief chooses not to take further action he shall give his reasons, but it does not say how thorough his reasons should be. For example, must a complainant settle for a one liner? What happens if he simply cannot arrive at a conclusion as to whether or not a police officer has committed a wrongdoing?

In the United Kingdom, section 49(3) of the Police Act, 1964, says, "On receiving the report of an investigation under this section, the chief officer of police, unless satisfied from the report that no criminal offence has been committed, shall send the report to the director of public prosecutions." Where the police chief is unable to certify there is no evidence of crime, the public prosecuting authorities must have the file passed on to them for a decision.

I believe that if the chief cannot arrive at a conclusion or, in the alternative, concludes that he does not have enough evidence to substantiate the accusation of the complainant, he should not refuse to take action. He should turn the matter over to the board, a copy of his conclusion being sent to the complainant and the police officer in question. The way section 10 reads now that option is not open to the chief.

Section 11(1) speaks of "necessary modifications" that can be applied to a hearing held in connection with proceedings taken under the Police Act. I feel that the term "necessary modifications" should be spelled out so that everyone understands what is involved.

For example, what modifications do the draftsmen expect to be applied? If they already know, why didn't they include the specific modifications they already had in mind?

In section 11(2), the subsection reads, "The chief of police, or if he is not the person who holds a hearing,..." then it carries on. I should like to suggest it be changed to read, "The chief of police, or the person he so designates to hold a hearing, shall give forthwith..."

The subsection speaks of his "decision" being given to the public complaints commission. I strongly urge this committee to replace the word "decision" with the word "findings" as it is the findings of the hearing that the commissioner should be interested in and not the chief's decision. The word "decision" could leave the commissioner with only enough information that would advise him that no further action is required, whereas a "finding" would spell out in greater detail the reason for the chief's or his designate's conclusion.

If you will look at paragraph (c) of section 14(3) on page seven, you will see some more examples of vagueness. It says, "Where there are reasonable grounds to believe that the inquiry and investigation is essential in the public interest having regard to undue delay in the conduct of an investigation under section 9 or other circumstances." It appears that the "other circumstances" are yet to be defined. What are the "other circumstances" the draftsmen had in mind when they drew up this bill?

Another sign of vagueness is the words "the inquiry and investigation is essential in the public interest." I presume that the draftsmen are speaking of the inquiry and investigation ordered by the commissioner. That being the case, it seems obvious that the board's investigation will precede the inquiry and thus the paragraph should be written in that order.

I respectfully suggest that the paragraph be rewritten as follows, "Where there are reasonable grounds to believe that there is an unreasonable delay in the investigation conducted by the bureau or there is reason to believe that the investigation by the bureau is not being conducted fairly or thoroughly..." and then carry on. I do not feel it is necessary to add the phrase, "essential in the public interest," as it is presumed that the commissioner's actions would be rightfully construed to mean they were essential in the public's interest.

Wilson Head, the president of the National Black Coalition, said on July 21 of this year that, "You can do a lot of damage in 30 days." He was obviously speaking about the police. I believe that if the report of the bureau to the board is thorough whatever damage is done will stand out quite clearly for all to see.

If you look at section 15(1), it deals with the right of the complainant to ask for a review of the decision by the chief of police as to no action being taken or what action is taken that isn't satisfactory to the complainant. There is no mention of a time limit in which a complainant can request a review. I don't

think a police officer should have to wait indefinitely to learn whether or not the matter is over. I suggest a time limit of 30 days be set.

Section 16(1) refers to the possibility of the complaints commissioner inquiring into and investigating the allegations of the complainant and being able to enter a police station.

The part I feel should be clarified in greater detail is the part that says, "and, for such purposes, he may, after informing the chief of police, enter a police station..." It is unlikely that the complaints commissioner will be entering a police station to examine its books, et cetera.

I think it was the intention of the draftsmen that the commissioner can designate one of his investigators to do this task. Unfortunately the pronoun "he" implies that only the commissioner may inquire and investigate. I recommend the sentence be changed to read, "and for such purposes he or his designate may, after informing the chief of police, enter a police station and examine therein the books."

Section 16(3) refers to the right of the commissioner to appoint a person to make any inquiry and any investigation he is authorized to make. Obviously this subsection is dealing with an investigator in the office of the complaints commissioner and the and the pronoun "he" refers to the commissioner. All this points to the fact the commissioner won't be conducting most of the investigations, but rather his investigators will be doing the leg work.

I don't like the phrase "to make any inquiry." It implies that he can conduct an inquiry. I realize the commissioner has the powers of a commission under the Public Inquiries Act, 1971, but subsection 3 doesn't give an investigator any such power. If you read section 2 of the Public Inquiries Act, chapter 411, you will notice a similarity between the word "make" in Bill 68 and the word "cause" in the Inquiries Act. The pertinent part in section 2 of the latter act says in part:

"Whenever the Lieutenant Governor in Council considers expedient to cause inquiry to be made." Please note the similarity of the meanings of "cause inquiry," and "make inquiry." In Gage's Canadian dictionary it describes "cause" inter alia, as make happen. It described "make" inter alia, as cause. The implication is that the investigator can cause an inquiry, something that only the Lieutenant Governor in Council can do. There is a simple solution to this: Simply rewrite section 3 to read, "The public complaints commissioner may in writing appoint a person to inquire and investigate on his behalf and such an appointee shall have all the powers and duties of the public complaints commissioner relating to his inquiry and investigation."

I now refer you to section 16(6). It refers to the commissioner being able to seek an order from a justice of the peace to enter any buildings, et cetera. There are a number of problems in this subsection. First let me read a particular part. It says:

"...the justice of the peace may issue an order authorizing the public complaints commissioner, together with such persons as he calls upon to assist him, to enter." You will notice I have underlined the words "together with." By placing the words "together with" between "the commissioner and such persons," it implies that the commissioner must also conduct a search together with the other persons. I don't think that was the intention of the draftsman.

The way out of this problem is quite simple. Change that part to read, "The justice of the peace may issue an order authorizing the public complaints commissioner and/or any persons the public complaints commissioner so designates to inquire and investigate to enter," et cetera.

The rewording of this section will clearly state that the commissioner can enter any building, et cetera, but that he doesn't have to. The text of the subsection as it reads now implies that the commissioner, together with such other persons, must accompany those other persons.

There is no mention in section 16(6) as to the jurisdiction the justice of the peace may exercise his power. For example, if a police officer's notebook is at his cottage in Wentworth county, does a JP have the authority to authorize an order for an investigator in Metropolitan Toronto to search a cottage in an entirely different county? As I understand the officer's notebooks are his own property and therefore does this section encompass such books? I don't think it should, but the subsection doesn't say so.

In subsection 7 it says in part, "The public complaints commissioner may, upon giving a receipt therefor, remove any books, papers," et cetera. Again the subsection doesn't allow for the possibility that it may be the investigator who is removing the books. For this reason I suggest that subsection be altered to read as follows: "The public complaints commissioner or one of his investigators may upon giving a receipt therefor, remove any book."

Again I refer you to section 16(6) in which the following words are written in part: "The justice of the peace may issue an order." You will note that according to this subsection the JP is only issuing the order because he is satisfied there is reasonable ground for believing there is something in the building that has to be grabbed.

The point I wish to bring to your attention is that although a JP cannot be forced to take action, other than by a writ of mandamus, he is required to take action to issue the order if he is satisfied that there are reasonable grounds to do so. For this reason the word "may" would be better replaced with the word "will" or "shall" or even "can."

4:20 p.m.

By using the word "may," this subsection implies that it is possible for the JP to not bother issuing the order. There is an obvious contradiction here. If the JP is satisfied with the

grounds for the order, he could hardly refuse and yet the word "may" gives him a choice to do so.

Speaking of contradictions, look at the ones in the following sections. Section 16(8) says in part, "Any copy made as provided in subsection 7 and certified to be a true copy by the public complaints commissioner is admissible in evidence in any action, proceeding or prosecution."

Now look at section 22(3). It says in part, "No record, report,, writing or document arising out of a complaint is admissible or may be used as evidence in any civil suit or proceeding."

Any copies of books, papers or documents are, in fact, documents and can also be said to be copies of writings, so in one section they can be used in any proceeding, and in another section they cannot be used in any proceeding. The contradictions in these two sections are the worst piece of legislative drivel I have ever seen. Can you imagine the dangers inherent in permitting section 22(3) to remain in the bill?

For example, suppose an officer has witnessed a beating of a civilian by a fellow officer and he writes it in his diary, and suppose his diary is seized and photocopied. According to section 22(3), that photocopy can never be used in any court of law even if it could prove that the officer lied when he denied under oath that he ever saw the beating. It could mean that one sure way of never having any incriminating papers used against an offending officer in any criminal trial is to make sure they end up in the hands of the public complaints commissioner.

If a citizen's home is searched illegally by a police officer, the documents that officer seizes can be used as evidence against the citizen; but when the public complaints commissioner seizes documents under the authority of a search warrant, those papers and documents cannot be used against him in any criminal proceeding.

Somehow it doesn't seem right; in fact, it is outright wrong. I don't know if this contradiction is simply bad draftsmanship or whether there is another reason for the existence of section 22(3), but I strongly urge this committee to consider removing this section, as it is open to abuse. Nothing can be more abusive than to prohibit documents which will prove a wrongdoing from ever reaching a court room.

Obviously the people in Chicago have anticipated problems such as this because evidence gathered by the office of professional standards can be subpoenaed if criminal charges are laid.

Section 17 says, "Where, after making a review, the public complaints commissioner is of the opinion that a police practice or proceeding should be altered, he shall report his opinion and recommendation to the Solicitor General..." It appears that he has the power to recommend that a particular police practice be altered, but he doesn't have the power to so order. This means, of

course, he has no more power to make recommendations than any other citizen. It is a shame that the public complaints commissioner can deal with individual complaints, but is powerless to compel the police to change their practices so that any wrongdoings do not arise in the future.

Section 19(17) allows the commissioners of police to pay legal costs incurred by a police officer in respect of a hearing conducted by the public complaints board. I have no qualms about this providing the officer in question is innocent of any wrongdoings, but suppose he is guilty of a serious crime while on duty. Do the draftsmen of this bill really believe that the citizens of Ontario wish to pay for this officer's legal fees just so he can take his chances before the board rather than admit his guilt.

Section 23 states that the Ombudsman Act, 1975, does not apply to the public complaints board. I disagree with this subsection, as it is obvious that the government of Ontario intends to exclude this board and the commissioner from the scrutiny of the Ombudsman.

Not too long ago, the Supreme Court of Ontario made a ruling--called the Morden test--in which it could be determined as to whether or not a board was answerable to the Ombudsman. The case was Re Ombudsman and Health Disciplines Board. The citation is 26 OR, second edition, page 105. Justice Morden gave three criteria for his determination:

"1. The organization must be created by an act of a provincial statute.

"2. The members must be appointed by the Lieutenant Governor in Council.

"3. It must discharge a provincially assumed regulatory responsibility on the course of which it is required to apply provincial law."

The Morden test applies in all three aspects with reference to the public complaints board and the commissioner. For this reason, I feel that the board and the commissioner should not be exempt from the scrutiny of the Ombudsman.

Finally, I wish to deal with section 18(2) and 18(7). Both subsections deal with the misconduct of police officers where the misconduct is of a minor nature. I am compelled to ask what differentiates a minor offence from a major one.

The office of professional standards in Chicago automatically handles any complaints ranging from handcuffs being applied too tightly to the shooting of suspects; in other words, offences in which excess force is used.

The RCMP also include the making of an anonymous complaint to the commissioner of the RCMP as a major offence, but I don't anticipate this act going that far.

Accordingly, I recommend that this bill include a subsection within section 18 as to what offences are considered major offences and which ones are minor in nature. This way the citizen will know where his complaint is going to go originally.

It's wrong to inundate the board with thousands of trifling complaints dealing with rudeness, but at the same time I feel that serious allegations such as beatings, torture and shootings should automatically go straight to the board rather than the bureau and the board should commence investigations on serious allegations immediately.

In closing, let me tell you what happens when our system of justice goes astray. A police constable serving out of 52 Division was arrested at a public swimming pool on allegations that he had fondled an eight-year-old girl. When questioned, he gave a phony name and didn't admit to being a police officer. He was charged with indecent assault. Evidence was submitted at his preliminary that he was seen kissing the child, was visibly sexually aroused and, as the judge later concluded, allowed his hand to pass beyond the waist of her back to the upper part of her buttocks.

The judge concluded that he wasn't convinced that a jury would regard such acts of the police officer as being indecent in nature to constitute the crime of indecent assault. He did however say that this act was not the kind of conduct a parent would like his children exposed to and that such conduct was inappropriate and indiscreet.

The police department didn't take this case too seriously because although they felt his conduct was bad enough to charge him, they didn't feel he should be suspended from duty. Hence a police officer who molests children in a public pool and who obstructs a police officer by giving a phony name can escape the consequences of his act because his a police officer.

There are people who will say that being a police officer has nothing to do with it. If you believe that, ask yourself what would happen if an old man with no fixed address was picked up under the same circumstances. If you don't know the answer to that question, you shouldn't be dealing with a government bill as involved as Bill 68.

Mr. Philip: Thank you, Mr. Batchelor, for your submission. There are a number of matters here that are of a technical drafting nature and indeed are matters that I would think would be dealt with under regulations rather than under the bill. I would suggest that counsel come back with an analysis of each of these points for the committee next week with his answers to that. That might be the easiest way of dealing with what amounts to a great number of points in drafting. Since we have a number of members of the committee who had other responsibilities in their home ridings and have left and so forth, this being the last day of the hearings, it would be of benefit to all of us to look at it.

There are a couple of matters I would question and on which I would like the advice of Mr. Hilton and counsel. On page 22, it

would be my understanding that anything of Criminal Code nature falls under the federal jurisdiction. The police, by their oath of office, must immediately on finding any matter of a criminal nature automatically investigate and lay charges in that manner and therefore it wouldn't come under this bill.

Mr. Hilton: (Inaudible.)

Mr. Philip: The other matter I would like to ask about is section 3(2) of the bill would lead me to believe in reading it that the word "commissioner" clearly is in the plural, namely, that commissioner would be commissioner and such officers as are under that commissioner, would it not be?

Mr. Hilton: Yes. I would also refer you to section 16(3):

"The public complaints commissioner may in writing appoint a person to make any inquiries and any investigation he is authorized to make and the person so making has the power and duty of the public complaints commissioner related to the inquiries and investigation."

So it's not as Mr. Batchelor suggested, that the public complaints commissioner has to go there. His designate can go there.

Mr. Batchelor: If I may just mention, I looked into that possibility. It does say he may appoint a person to make an inquiry, but it doesn't define him as being a commissioner. I would presume that person he appoints to make inquiry is the investigator who is referred to in an earlier section. In the parts I was referring to, it only spoke of the commissioner. It never spoke of the investigator.

Mr. Hilton: No, but the commissioner may designate, and once he designates he is his alter ego under the Interpretation Act.

Mr. Batchelor: So what you are saying then is that once that investigator has been so designated, he is acting as a commissioner.

Mr. Hilton: No, that he is there in the stead of the commissioner, and has all the powers.

Mr. Philip: Subsection 3 gives him all the powers and duties of the public commissioner.

Mr. Hilton: That is true, as I say, in both places, in addition to what you said.

Mr. Philip: Lastly, and I do not mean to sound critical, because I think there are some valid points in here which should be investigated but--

Mr. Hilton: We have undertaken to look at them all because there are so many, and they came out so fast that I could not--

Mr. Philip: The suggestion on page 32 relating to the Ombudsman, I would--being new to the Ombudsman's committee, my understanding is that the third criteria would make this ineligible for investigation under the Ombudsman Act.

Mr. Hilton: What page is that on?

Mr. Philip: Page 32 of the brief.

Mr. Hilton: Near the end.

I would have to give that some thought before I answer that.

Mr. Philip: Can you bring that back to us?

On the more general matter there are some very interesting quotes here which I think are helpful to the committee, particularly in relationship to my belief that the investigation must be independent. Since I have already made my views known on that, as has Mr. Laughren, and some other members of the committee, to other people that have come before the committee, I do not think there is any purpose in my putting back on the record the various areas in this brief in which I already agree. Mr. Batchelor can read the Hansard and find out that I happen to agree with him in response to other witnesses. I have no further questions.

Thank you very much for your help. You have been a help to this committee before.

Mr. Chairman: Thank you, Mr. Philip. I have no other names.

The committee adjourned at 4:34 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT

TUESDAY, SEPTEMBER 29, 1981

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Philip, E. T. (Etobicoke NDP)
Piché, R. L. (Cochrane North PC)
Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister

Ritchie, J. M., Director, Office of Legal Services

Witnesses:

Gehrke, L., Staff Lawyer, Jane-Finch Legal Services

White, D., Alderman, City of Toronto

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, September 29, 1981

The committee met at 10:11 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Gentlemen, we have a quorum in place. Can we carry on?

Mr. Mitchell: How?

Mr. Chairman: What do you mean by how, Mr. Mitchell?

Mr. Mitchell: How do we carry on?

Mr. Chairman: we carry on politely--

Mr. Mitchell: I know how we sometimes do it.

Mr. Breithaupt: You know how to carry on don't you, the Carry On Gang?

Mr. Chairman: Yes. The first person is Ms. Gehrke, staff solicitor from the Jane-Finch Legal Services.

Ms. Gehrke: Mr. Chairman, I am a resident of the municipality of Metropolitan Toronto and I am also the staff lawyer at Jane-Finch Legal Services. We serve low income people in the Jane-Finch area. I would like to speak both as a private citizen and also from my limited experience as a lawyer in this area of the law.

Mr. Williams: Could you just indicate to the committee, is the Jane-Finch Legal Services a private organization or is it sponsored by the local municipality or--

Ms. Gehrke: No, this is a community legal clinic funded by the Ontario legal aid plan.

Mr. Williams: Oh, I see.

Ms. Gehrke: I think we all recognize that in the performance of their duties the police are granted powers to infringe upon the liberty of the individual--for example, through the exercise of reasonable force, the enforcement of search warrants, et cetera--and that while most officers will exercise those powers and perform their duties fairly and correctly, there

are, of course, a few officers who from time to time will not act appropriately, and that is why I assume this bill is before you.

I would like to speak in particular to section 14 of the bill. Section 9 sets out that complaints are investigated by the police complaints investigation bureau and after 30 days an interim report will be forwarded to the public complaints commissioner. However, there may not be such a report made to the complainant or the police officer where, in the opinion of the person in charge of the complaints bureau, such a report might adversely affect the investigation. I refer you to section 9(3).

So section 9 clearly sets out that the investigation is to be, at least for the first 30 days, in the hands of the police complaints investigation bureau and the person in charge of that bureau. Section 14 sets out the circumstances in which the public complaints commissioner may inquire into and investigate the allegations in the complaint.

Section 14(3) provides very limited grounds upon which the public complaints commissioner may inquire into and investigate the allegations in the complaint within the first 30-day period after the complaint is made. Within that first 30-day period after the complaint is made, it would appear to me from reading this bill the only time the public complaints commissioner can conduct an independent investigation is, "where there are reasonable grounds to believe" that such an inquiry "is essential in the public interest"--that is a very vague term--"having regard to undue delay" in the investigation.

Section 14(4) makes it clear that such a decision to inquire into the allegations in the complaint during the first 30 days would be subject to judicial review. I think we are all familiar with this. I would like to speak to why I find this particular situation to be objectionable.

First of all, the kinds of complaints which people make about police conduct tend to be highly charged emotionally. The kinds of complaints being made that I have heard of are complaints such as beating, unlawful confiscation of personal property, harassment by the laying of charges following a complaint, such as a trespassing charge or a charge of causing a disturbance, and physical harassment. My experience within the community tells me that in such a situation the person making the complaint is highly fearful of making a complaint to the police and of being investigated by the police.

I would submit that an investigation by the police of such complaints without any kind of supervision in the first 30 days might reasonably create an apprehension of bias. It is my submission that this kind of investigation is of sufficient public import that every effort ought to be made not to create an apprehension of bias on the part of the investigator. I would suggest to you the inclusion of a civilian investigator, perhaps along with the police staff, might alleviate this possible problem.

That is the core of my submission. I would be happy to answer questions.

Mr. Williams: I have a couple of questions. You were expressing concern about those situations where the reactions of the police officers appeared to be excessive. You cited several examples of occurrences such as physical harassment and so forth. But there is one statement you made that I am not clear on. You said the police have been known to harass citizens by the laying of charges.

10:20 a.m.

Ms. Gehrke: I did not say the police have been known to do that. I said I have heard of complaints being made in that respect. I am only speaking in respect to the kinds of charges or complaints one might expect to come before a complaints investigator. I am not saying the police have done this. I am simply saying I have heard of those kinds of complaints.

Mr. Williams: Okay. What I was trying to get clear in my mind was how the laying of a charge can be a harassment. I presume the police were simply carrying out what they see as their duty, to lay a formal charge. They will not do so frivolously. But I can see, on the other hand, from the citizens' point of view, that they would equate that with being a form of harassment.

Ms. Gehrke: A form of retaliation for a complaint; I have seen that.

Mr. Williams: I do not know that is a legitimate--it may be a perception, but I just do not see how one can equate the laying of a charge with that being a form of harassment.

Ms. Gehrke: However the matter might be determined, many people perceive a charge which follows a complaint--in fact, some charges do follow complaints. Many people who have traffic tickets or have a charge following a complaint might perceive that as a form of harassment and might make a complaint to a complaints bureau whether or not they are justified in making such a complaint. I am in no position to comment on a hypothetical situation. I am simply saying these are the kinds of situations I think will present themselves to the investigator, whether or not they are justified. I understand what you say.

Mr. Williams: I just wanted to get it clear in what context you are making that comment.

Ms. Ghrke: Yes. These are the situations that will present themselves to the investigator, however they might be resolved.

Mr. Williams: We are getting this repeatedly throughout the hearings, in regard to the 30-day period that is the main thrust of your presentation this morning and the apprehension you have, or the people you talk to have, of their somehow being prejudiced by reason of the fact the initial 30-day period has to transpire before the complaints commissioner would get fully involved in the process.

Without the system in place, it is very hard to attach

factual experience to these apprehensions and concerns. That is the difficulty of bringing forward something new. It may be a perception that people have but I do not know that you can really substantiate a perception based on hard facts.

Ms. Gehrke: No, certainly not.

Mr. Williams: This is the difficulty we are having, because people come in with different feelings as to how this can affect individuals, and yet there is no hard evidence on which one can substantiate their point of view. I presume you are no different in this particular case.

Ms. Gehrke: No, I am not. I am partly resting my submissions on the old axiom of, "Justice must not only be done but must be seen to be done." In a situation where a duty of fairness ought to attach, it is important for there not to be an apprehension, meaning an appearance, not a factually substantiated bias, but even an apprehension of bias might damage the usefulness of this entire process.

Mr. Williams: I can appreciate your concern. It is just difficult to come to grips with this when there is no clear evidence before us that the 30-day period would somehow adversely prejudice the individual involved. I guess again it is only a gut feeling that everybody has as to which way they posture on this particular matter.

Mr. Chairman: Mr. Wrye, Mr. Williams was more brief than usual and caught you at the coffee urn.

Mr. Wrye: I apologize. Thank you, Mr. Chairman. I did not expect Mr. Williams to limit his questions to two or three. I have a couple of questions of the witness in a couple of areas. You spent some time on section 14 and I would just like to review it with you.

You expressed your concerns that even after the public complaints commissioner may step in in these exceptional circumstances, that may even be subject to a challenge by the chief. Do you see, for example, if the chief of police were to challenge an attempt by the public complaints commissioner to step in at an early time in an investigation, it could in effect ruin the whole process, it could just destroy any chance the process had of working?

Ms. Gehrke: It is hard to say what exactly is going to happen.

Mr. Wrye: Let me ask you, from your reading out in the community, how would the community react to that, whether the chief had in a sense any justification or not? How would the community view that?

Ms. Gehrke: I think the community is perhaps less concerned about that point and may not understand that particular point. I am less concerned about that point than about the vagueness of the grounds on which the public complaints

commissioner can move in, first of all, and the fact that they are so limited within that first 30-day period. What I am hearing is that people in the community do not understand why the first 30 days is sacrosanct.

Mr. Wrye: You are saying, first of all, just the whole basic idea of having the police investigate themselves for 30 days and second, having what you believe to be a very limited and narrow ground under which the PCC can enter the situation, you would prefer, looking at 14(3)(c), "Where there are reasonable grounds to believe that the inquiry and investigation is essential in the public interest..." in other words you would leave it as wide a ground as possible rather than get into exceptional circumstances?

Ms. Gehrke: Yes, or just get rid of 14(3)(c) and leave it that the public complaints commissioner may inquire--well, in fact, get rid of that whole subsection. I would prefer to have him have the widest scope.

Mr. Wrye: You would like to give him the widest grounds to be able to get in?

Ms. Gehrke: Yes, it would be in his discretion.

Mr. Wrye: Simply if he chooses to do so. That is the kind of wording you would want us to find and not subject, I gather, to any appeal by the department chief or anyone else, as has been suggested. It is certainly possible now under 14(4). You would not want that appeal procedure to be there? Is that what you are saying?

Ms. Gehrke: I am not so uncomfortable with having the public complaints commissioner's decision be an exercise of a statutory power. As I said, if that were still there, I would not be so terribly unhappy if he were given broad discretion to investigate allegations from the time of the making of the complaint.

Mr. Wrye: If we were to end up, when all is said and done--and my own inclination is to hope that we will not--with a situation where essentially the police do the investigating in the first instance, can you see any method that can be established to avoid your concerns of the kind of intimidation and threats of charges which follow the laying of complaints, or which come at the same time as complaints are laid?

10:30 a.m.

Ms. Gehrke: I think having an independent civilian investigator involved from the beginning might allay the fears that the public has about that kind of harassment occurring after the laying of the complaint. The nature of the process makes it very difficult to preserve confidentiality because the police officer involved must be notified in the interest of fairness and the interest of natural justice that there is an investigation ongoing, but I would think that perhaps the presence of a civilian investigator from the beginning might both allay fears and perhaps

act as some deterrent to any possible harassment that might follow such a complaint.

Mr. Wrye: Let me just clarify that. You mention in your opening statement that what you are proposing is in effect two-member investigating teams; one member from the police and one civilian working as a team?

Ms. Gehrke: Yes.

Mr. Wrye: Which you feel might be a compromise acceptable both to the police who are concerned about having, according to the Solicitor General, the investigation taken out of their hands, and in effect, a vote of no confidence in their own ability to investigate themselves, and the concern of the public, on the other hand, who wish to have an independent investigation. You would try to marry the two with two-man teams; one from the department.

Ms. Gehrke: Yes.

Mr. Wrye: Thank you. Those are my questions.

Mr. Laughren: You work in an area where there is more than the normal amount of conflict between the police and the community, is that true?

Ms. Gehrke: That is very hard to say. That is a speculative issue, I am afraid. There really are not adequate statistics kept on that.

Mr. Laughren: Nevertheless, in the community in which you work, do you think there is a sense that the deck is stacked?

Ms. Gehrke: Again, I would find it very hard to generalize on that. Generally, it is a fairly poor community, and people work very hard to make their living, and it is a highly ethnic community.

Mr. Laughren: The reason I put the questions that way was that I wondered whether it matters if the deck is stacked. Even if the perception is there that it is, something should be done about it. I am wondering whether or not you see that as being the critical aspect of the bill as it now stands, and that the perception of independence in terms of investigation and so forth is terribly important among your people? I was not trying to lead the witness, as it were, when I used those phrases but rather to clarify whether or not that is the perception.

Ms. Gehrke: Yes, I would agree with that. The reason I am here is that I do think the bill must create an image of being fair in order to work.

Mr. Philip: The area in which you are working, from my knowledge of that area, which is just a little east of my riding, has an increasingly large Spanish speaking community. Is that correct, or would that be a little bit to the west of you?

Ms. Gehrke: No, there are Spanish speaking people in that area.

Mr. Philip: Has it been your experience that a lot of these people who come from Latin America, because of their experience under dictatorships in Chile and Argentina, in particular, would be reluctant to have confidence in any bill, or would be reluctant to complain about the police for any reason, because of that experience in those countries?

Ms. Gehrke: I have never really heard that expressed by the people I know in that area.

Mr. Philip: Would you feel they would be more likely to have confidence in this system if there were an independent investigation from the beginning?

Ms. Gehrke: It is hard to speculate on how other people feel. I know how I feel and I feel I would have more confidence if there were an independent investigation from the beginning or if a civilian were involved along with the police from the beginning. I have heard some people express the feeling that an independent investigation would give them more confidence in the process, yes.

Mr. Philip: Have you had any interaction with any of the small trade union locals in your area? There are a lot of very small factories up in that area.

Ms. Gehrke: Not with the unions, no.

Mr. Philip: You haven't had experience of any conflict between the police and pickets?

Ms. Gehrke: No.

Mr. Hilton: Ms. Gehrke, I am advised that the act really does not prohibit a parallel investigation or an investigation by the PCC in conjunction with the police. If such was carried out within the first 30 days would that satisfy your concerns?

Ms. Gehrke: Within the first 30 days? How does that work with subsection 14(3) of the act?

Mr. Hilton: As I said, with the consent of.

Ms. Gehrke: With the consent of the police chief?

Mr. Hilton: Yes, working with them.

Ms. Gehrke: I would prefer not to see it depend upon the consent of the police department.

Mr. Hilton: But if that consent were forthcoming, would that satisfy your concerns?

Ms. Gehrke: It would certainly satisfy some of my concerns.

Mr. Elston: Mr. Chairman, if I could just have an opportunity to investigate that a little bit further, perhaps the Deputy Solicitor General would advise the committee if they are considering enshrining that type of proceeding now in the bill?

Mr. Hilton: No, it was not to be enshrined. Mr. Linden, I understand, has been talking to the chief and has said that in certain circumstances where he considers there might be tensions involved, could they work that out. It is my understanding that, while it is not enshrined in the bill, it is the intention by liaison to endeavour to work out some sort of modus operandi as I have mentioned.

Mr. Elston: Perhaps then it would be better if the committee looked into providing that mechanism to work through the bill. It seems to me we are not dealing with personalities when we are dealing with legislation. In the event that we lose one personality who is willing to co-operate with the other side of the investigation, if we can put it that way, it might be well if we do see our way to making the appropriate amendments to assist a new person in the field.

Mr. Hilton: My answer to that, sir, is to remind you again that this is pilot legislation with a three-year destruct. What we are seeking is to develop legislation, methods of operation, in an experimental fashion. It is capable of being amended along the line from year to year. It has to be reviewed completely at the end of three years and much will be evolving. I submit it may well be that much will be changed based upon experience and this is one of the areas that it is sought to experiment with.

10:40 a.m.

Mr. Philip: I think the point that is being made is, why not make those changes now? It is an experimental bill; why not have the best possible experimental bill? That is the point that is being made.

Mr. Hilton: I hear the point being made, Mr. Philip. Sometimes you can lead a horse to water, but you cannot make it drink. If we have the horse drinking now and are trying to go ahead and develop a workable arrangement, step by step without pushing too far, I submit the committee be very careful in pushing situations so far that we end up with an unworkable compromise.

Mr. Philip: It is an interesting analogy. May I ask who is the horse? Is it the chief of police or the Solicitor General?

Mr. Hilton: No. The horse is the whole police community. We cannot work without them.

Mr. Philip: Having had the police association before us, I thought it was a rather flexible co-operative horse. Therefore if you are talking about a less co-operative one, then I assume you are talking about somebody other than the fellows who are on the beat or their representatives.

Mr. Hilton: No, sir. The police association of Toronto has been most co-operative and has worked with us in the production of the bill now before you.

Mr. Philip: Then in the spirit of that co-operation, surely some changes that satisfy the communities which have been appearing before us would not be too strenuously objected to. All indications from the police association are that they will co-operate with whatever bill we come up with, because they are law-abiding public employees.

Mr. Hilton: I hear you.

Mr. Wrye: Mr. Chairman, I would like to pursue this. What I am hearing may be a rather important shift in what I thought we were discussing in terms of this bill. The witness has suggested--and I think it is a very responsible suggestion that I want to look at very closely--that perhaps even in all cases we have a situation where we would have not a parallel investigation but a two-man team of investigators, one from the community, to satisfy the community that justice is being done and so that the community will see it is being done, and one investigator who will maintain that high degree of professionalism that we heard of from the president of the police association last week.

The deputy minister is now suggesting that that is indeed what Mr. Linden and Chief Ackroyd have been discussing in a lot more cases than just a handful. Is there some consideration that perhaps that should be the way we should go in all cases? Why are we limiting it? You keep speaking of this being a pilot project, and I think what some of us are saying is, if it is going to be a pilot project, let's be bold about it. Let us have a project that is truly innovative, that is innovative after due consideration from all people within the community.

It seems to me that is what we have been hearing for the last week. It seems to me Mr. Linden has been hearing that as well. I wonder if the Deputy Solicitor General could perhaps share the ministry's views as to whether this is now what is perceived, this kind of a joint investigation.

Mr. Hilton: No, it is only perceived in special circumstances. But I have to repeat what has been said here over and over again, sir, that we have studied the American experience, and endeavoured to avoid some of the pitfalls that have been demonstrated in that experience; we have studied the advice of Mr. Maloney, Mr. Justice Marin and Judge Morand; and I would invite you to read all of chapter two, which is very illuminating, of the recent report on the RCMP entitled Complaints of Police Misconduct.

All the matters that have been raised here by all those who have objected and come forward have been discussed at all those levels. After due consideration, all those learned persons have concluded that this was not the most satisfactory way to go. Having said that, I think it would be foolishness in a pilot project to fly in the face of international experience; to fly in the face of the British experience; to fly in the face of the absolutely most recent report produced on the RCMP and just say

they are all wrong. If they are proven wrong, I am sure they will be changed.

Mr. Wrye: I suppose, sir, I feel a little bit like perhaps the provinces did yesterday in suggesting to you, with respect, that there can be different interpretations, particularly of the McDonald commission report. I would refer you to page 978, at the top, where there appears to be an interpretation that can speak directly, not so much to the RCMP experience, which is somewhat different, the community they serve being somewhat different in general, but can speak directly to the so-called visible minorities we have heard from and been speaking to in these hearings; that being the tension or distrust between the RCMP--and I would stroke out RCMP and say Metro Toronto police--and the community they serve.

Mr. Hilton: Which section?

Mr. Wrye: On page 978 of the report, it is listed C, investigating allegations of misconduct. I have only a few pages here, I am not sure exactly--

Mr. Hilton: No, but all the paragraphs are numbered.

Mr. Wrye: I am sorry, paragraph 30.

Mr. Hilton: You mean "Our second concern..."?

Mr. Wrye: Yes, that is correct. I would simply, with respect, suggest to you a different interpretation can be put on that, which would allow for the wider scope of investigation at an independent level, than that which McDonald eventually proposes.

That may simply be because a more independent investigation unit is appropriate here in Metro Toronto, more appropriate than in many of the areas the RCMP serves, which are areas without the very heavy ethnic and multiracial makeup we have here in Metro Toronto, which is certainly a matter that is subject to interpretation. You have yours, and I obviously have mine.

I would not suggest it is in any way as firm as you are suggesting. As far as Maloney and the earlier reports are concerned, I would remind you that one is May of 1975, and there has been a lot of water gone under the bridge in the last six and a half years, and the 1976 report by Judge Morand indicates that rather than do his own independent study he has, as he says on page 186, given particular attention to the report of Mr. Maloney, which is to suggest as he goes on that by and large he has simply followed the Maloney recommendations. It is a matter of interpretation, I suppose, as to whether a report that was done six years ago is still totally valid. I am not sure it is.

Mr. Hilton: Nor is it totally invalid.

Mr. Wrye: No.

Mr. Hilton: The paragraph you quoted states: "Our second concern is that in some situations where there is tension or

distrust between the RCMP and the community they serve, complainants or witnesses may not lend their complete co-operation to the investigators. Without such co-operation, the quality of the investigation will be poor and, consequently, the complaint will not be satisfactorily resolved."

I submit to you I do not see that paragraph 30 is open to any problem of interpretation. Indeed, I have only to look at the conclusions that Mr. Justice McDonald and his confreres came to to convince me they had no doubt as to what that paragraph meant.

Mr. Mitchell: Mr. Chairman, I certainly do not want to appear to be inhibiting the discussion that is going on; however, I think what we have resolved to in the last few minutes is what we will probably be resolving to when we begin going through clause by clause on this particular item.

I think it has been indicated that certainly the principles that are involved within the operation of this bill have been indicated by carrying on some discussion, but at this point in time I think we are really starting to rehash what we will be doing when we deal clause by clause. I think we have got somewhat off the track at this point in time, albeit it has been good discussion and I don't dispute that, but I think it would be better left until we deal with the issue clause by clause.

10:50 a.m.

If I may be so bold, I would suggest we are holding Ms. Gehrke here and the conversation really has not involved her. I would suggest that perhaps a 10-minute recess might be in order until Mr. White appears at 11:15.

Mr. Philip: I just want to point out that the Deputy Solicitor General has once again made the same allegation that the Solicitor General has made; namely, that no study advocates the kinds of things that the citizens' groups that are appearing before this committee are asking for.

In fact, I know of no study that he can point to that says the old system, the system which he is advocating, has actually worked. On the contrary, I quoted one study, the study of the Chicago system, which stated the reason it wasn't working was that it did not go enough in the direction the community groups are asking for in terms of independent investigation.

Just going through some of the studies here, I will just quote The Police Complaint System, Institutional Cover-up, which was a report and recommendations by the National Capital Area Civil Liberties Union, which concluded that citizens apparently are apathetic about filing complaints because of the futility of doing so in view of the existing system. I can go on and on.

In fact, there are no studies that show the system you are advocating has worked satisfactorily in any other jurisdiction. It is one thing to say that no study has recommended what these groups are recommending, but in fact there is no study that has recommended what you are recommending. On the contrary, they have

come to the conclusion that those systems in which police investigate themselves do not have the confidence of the community and they are not working for that reason.

Mr. Hilton: Mr. Philip, we have merely found out that those that seem to be advocated do not work and we are seeking, as the witness or one of the members said, to be boldly innovative and try a system that has not yet been tried.

Mr. Philip: Can you name one jurisdiction where the system that is being advocated by the community groups has been tried and proven to not work?

Mr. Hilton: Philadelphia and New York.

Mr. Philip: Philadelphia, it was clearly shown, was related to the whole circumstance and the politicization of the police chief and, indeed, later charges of corruption were laid. So there was a vested interest in that jurisdiction to not make the system work.

Mr. Chairman: Thank you. I take it Mr. Mitchell's suggestion is appropriate, that we have a 20-minute adjournment to reconvene at exactly 11:15 sharp with a quorum here.

The committee recessed at 10:55 a.m. and resumed at 11:17 a.m.

On resumption:

Mr. Chairman: Gentlemen, we have a quorum in place. Mr. David White, alderman of the city of Toronto, is the next witness. I would point out to you exhibit 13, which is at your desks. This is being presented to us.

Mr. White: Mr. Chairman, I would like to urge your committee to recommend amendments to Bill 68 in order that the public, particularly those segments of the public which are likely to feel aggrieved, may have confidence in the new procedures for handling complaints against the Metropolitan Toronto police. I gather from some of the scuttlebutt in the room while I was waiting that is a fairly familiar theme in these proceedings.

The proposal embodied in Bill 68 will continue to leave the investigation of a complaint, at least in the first instance, in the hands of those against whom the complaint is made. The bill proposes the complaint would initially be forwarded to the police complaints investigation bureau for investigation by the police.

Presumably this body would function much like the present citizens' complaint bureau, which is the existing complaints bureau that members of the public and every recognized racial, ethnic and minority group now finds inadequate. They do not believe the bureau is capable of or even willing to undertake an adequate investigation.

Many individuals actually fear reprisals from the police for launching complaints. This fear was no doubt enhanced after the

current chairman of the Metropolitan Toronto Board of Commissioners of Police, Judge Philip Givens, announced to the press, some years ago now, that the commission would in future step up its efforts to prosecute complainants whose allegations were found to be unsubstantiated.

11:20 a.m.

Just to elaborate a little on that, you may be aware that I am involved with an organization called Citizens' Independent Review of Police Activities and I have, in the last two weeks now, received quite a number of telephone calls coming in on the line, and I have talked to number of people who have launched complaints.

I can assure you there is a fear amongst the public that if they launch a complaint against the police there will be reprisals emanating from that, reprisals including harassing phone calls and more serious action such as prosecution for public mischief, so I can assure you that is a very real concern.

If it is assumed it is in the public interest to have police abuses brought to the attention of higher authorities, and if it is assumed that such action will result in improved police operations in the community, it also follows that the procedures for launching complaints should be of such a nature the public is not inhibited from using them.

The public must be assured that any investigation will be thorough. This implies that it should be immediate. The proposed 30-day waiting period that would normally intervene before the independent investigation could begin must be seen as a serious flaw. Thirty days is obviously a very long time to begin any investigation. Certainly, the Metropolitan Toronto police would have a very low conviction rate if, in the normal course of their investigations, they had to wait 30 days before they could begin.

The public must also be assured investigation will not result in reprisals. There is no reason to believe the public will have greater confidence in the public complaints investigation bureau than they now have in the citizens' complaint bureau simply because the complaints commissioner may get involved at some later date.

Over the years, there has been a seemingly endless stream of inquiries and reports that have all come to the conclusion that a fully independent complaints investigation procedure is necessary to provide effective investigation of complaints and to instil confidence in the complainant and in the general public that a satisfactory investigation will take place.

More importantly, there is not a single ethnic, racial or other such community based minority group that has endorsed Bill 68. All such groups have concluded that the bill should be defeated rather than implemented in its present form. Members of this committee and of the Legislature should accept this fact as a warning that the proposal will not work.

I would, therefore, urge this committee to recommend

amendments to Bill 68 so that it will finally establish a fully independent civilian review and investigative procedure.

Mr. Philip: Alderman White, thank you for your interesting brief. Since you represent an area that has a different ethnic composition than a lot of the people we have heard from so far--namely, you have a lot of people from eastern Europe in your ward, if I am not mistaken--the Solicitor General stated that it has been his experience in talking to many hundreds of people during the past year that there is very significant misunderstanding as to what is contained in the bill. Do you know of any ethnic group in your area to whom the minister has spoken and which is supporting the bill in its present form?

Alderman White: I am not certain who the minister has spoken to. However, I am not aware of any group in my ward or in the city that is supporting the bill in its present form.

Mr. Philip: Even though you represent part of the ethnic community that might in all fairness be called more conservative than perhaps other wards in their views on matters such as the police, you are not aware of any group in that community that is in support of the bill in its present form?

Alderman White: No, sir.

Mr. Philip: In your experience, would the people you represent likely lodge a complaint if the bill were to pass in its present form?

Alderman White: Obviously some people would, but there would be a great reluctance on the part of the people I represent to bring a complaint forward in this way. As I indicated, there is certainly an awareness out there that the existing procedure does not result in a reasonable investigation. I don't believe there's any reason to suppose that people will now have more confidence in this procedure. It's essentially the same thing with a later possible investigation on the part of the complaints commissioner for very serious matters, probably.

I don't believe there is anything in this bill which significantly improves the current procedure and which would encourage people to come forward. I think that's the key thing. I think it's difficult enough for people to launch a complaint if they are alleging police misconduct, and there's nothing in this bill that now makes it easier to do.

Mr. Philip: The area you represent has had a number of picket line incidents, as I recall, or at least there certainly have been a number of large strikes--the packing house workers and so forth. Have you had any input from any of the trade unions in your area about their concerns regarding this bill?

Alderman White: I have had a discussion with the vice-president of the local at Canada Packers, the Canadian Food and Allied Workers. He has expressed the same concern that there is a need for a fully independent procedure.

Mr. Philip: Thank you. I have no further questions.

Mr. Piché: Mr. Chairman, regarding the statement made here that Judge Givens announced to the press recently that the commission would in future step up the effort to prosecute complainants whose allegations are found to be unsubstantiated, I think that's an unfortunate statement. Would it be possible for us to get a copy of this? I certainly would like--

Alderman White: I'm sorry. I should have--

Mr. Piché: I know, but I mean we can possibly get it through the clerk here, whatever statement was made; because it makes it very difficult for us when we are dealing with this bill when statements are made like that. This is trying, I would think, to scare people who would like to go and make a complaint. Even if the complaint is legitimate, if they can't prove it the judge turns around--this is the way I read it--and says, "As the chairman of the police commission, unless you can prove it you could be in trouble."

You know, the act calls for, I think, a five-year sentence if found guilty in a court of law, plus a \$5,000 fine. I stand to be corrected here. But to me these statements are statements that you have to be careful about, especially in the position that he has. I would tend to agree that you have to be very careful about making these kinds of statements.

I for one would like to see, as we progress with these hearings, what Judge Givens's statement was in that particular area, because it's of very much concern to me personally; the poor little fellow figures he has a complaint to be made and then he has that to contend with.

Mr. Williams: Mr. Chairman, weren't those comments made by Givens at the time of the so-called exposé by the Globe and Mail of police brutality, which brought about public pressure that forced a public inquiry at great public expense, and the end result of which was that virtually all the allegations made by the individual citizens proved to be unfounded?

It was in that context that Judge Givens made the observation that frivolous or unfounded allegations were being made which were bringing about this type of expense to the public when there is just no substance to them; and he was indicating, I think, in the terms used last evening by another politician, that people should proceed more prudently before they start making wild allegations that they are going to start a set of events that's going to be costly to the taxpayers at large.

I suppose the most embarrassed party of all in that particular set of circumstances was the Toronto Globe and Mail itself, because the big exposé went over like a lead balloon, but not without this public inquiry that had to be conducted because of these allegations that proved unfounded. I think that was what the chairman of the police commission was responding to at that time. So in that context I don't know that this observation was necessarily inappropriate.

11:30 a.m.

Mr. Hilton: Mr. Chairman, may I comment on that? Just from a legal point of view, Mr. Piché, it may help you.

Alderman White's brief, as I read it, and I think he read from it, says: "The current chairman of the Metropolitan Board of Commissioners of Police, Judge Philip Givens, announced to the press that the commission would in future step up its efforts to prosecute complainants whose allegations were found to be unsubstantiated."

You could never succeed in an action or a charge if it were found to be unsubstantiated. You would have to go for the content of the offence to show that the charges were deliberately false; in other words, that you knew they were wrong but you did it on purpose. It's not just that they can't be substantiated; it's that you seek to mislead justice by bringing forth a deliberate complaint against the police which they can prove was deliberate.

It's a difficult matter to prosecute, because the mens rea that has to be proven is hard to prove: that a person deliberately does something wrong in order to mislead or misguide the police or give them misinformation.

Mr. Philip: That would be brought under what act?

Mr. Hilton: It's under the Criminal Code.

Mr. Philip: They could proceed, though, under the Libel and Slander Act, couldn't they? That would be civil.

Mr. Hilton: That would be civil, but the laws of libel and slander, both of them, are very, very difficult laws. There is, again, a very substantial onus on the person alleging that he was libelled or slandered to prove that the person knew that what he was doing was wrong.

The fact that a matter is unsubstantiated wouldn't give rise to any libel and slander, nor would it give rise to a malicious prosecution or public mischief charge. You have to go a lot farther than that, and I think my friends the lawyers here with me will agree with that.

Mr. Wrye: Speaking to Mr. Piché's suggestion, if I might, as one of the nonlawyers here I appreciate what the deputy minister has just said, and I'm sure he's right. My concern would be that those who were contemplating the laying of complaints, perhaps having read the statement from Judge Givens and not being lawyers, might be inclined not to lay those complaints because of the concern that somebody might find them unsubstantiated and they might be hit by a charge.

I for one think that Mr. Piché has made an excellent suggestion. I would like to see the statement that Judge Givens made, because I think the important thing--and I think it's what you were getting at, René--is that we are concerned about the climate in which we find Metropolitan Toronto at this time, and surely anything that Judge Givens may or may not have said regarding actions that could be taken as a result of laying complaints will help create that climate.

We have heard not only from Alderman White but from a number of other witnesses. The name of Judge Givens in this specific instance has come up time and again. I think now it would behove the committee members just to have a look and see what he said.

Mr. Hilton: Mr. Wrye, I think Alderman White was very fair. I think he did add that it was five or six years ago that this statement was attributed to Mr. Givens.

Alderman White: I don't think it was that long ago.

Mr. Hilton: It was some time ago. I thought I heard you say that.

Alderman White: It was not within the last--

Mr. Wrye: With respect, five or six years or however long, we have now heard it from about four or five witnesses, so clearly people still have it in mind. In terms of the climate, I would just like to see what he said.

The Acting Chairman (Mr. Eaton): Is it the consensus of the committee that they would like to have the clerk obtain Judge Givens's statement? Right. He will provide it as soon as possible.

Mr. Philip: If I'm not mistaken, Mr. Chairman, there was a more recent statement by Judge Givens. I may be mistaken. I can't find the press clipping, but I think it was equally inflammatory, and it might well be worth our while to locate that.

Indeed, it might be worth our while to invite Judge Givens before us to find out exactly what he has said, since it appears that his attitudes as expressed in the press--whether he can make these points of view stick legally or not--are less important than the public perception of how he's operating. It might be worthwhile to invite him to come forward and, since this has been brought up many times, give him an opportunity either to justify what he said or at least to indicate that he has said those things or that he is not of that opinion at this time.

Mr. Chairman: Is it the committee's wish that we be satisfied with the press reports and the report, as the previous consensus agreed, or does the committee wish Judge Givens invited to appear before the committee?

Mr. Piché: At this time I would like to suggest we go through the statements he has made to assure ourselves that the statements he is making are made as a man who is serving the public and not possibly scaring them. I would be very interested to read what he has said, and then the committee can do what it wants later. I suggest it could be premature to get Judge Givens here; but it might come to that, because it's of some concern to me, and I know I speak for an awful lot of people when I say that.

Mr. Wrye: I think that's fine.

Mr. Chairman: That's the consensus? Fine. Thank you very much. Mr. Philip, can you locate that latter reference?

Mr. Philip: I'll look. Perhaps Alderman White may have--

Alderman White: I can forward the copies of the clipping.

Mr. Philip: Do you have a more recent one?

Alderman White: I'm not sure which one you are referring to, Mr. Philip, but the one I am referring to is certainly not six years ago; it's perhaps two years ago.

Mr. Chairman: Mr. Philip, if you can locate or identify it then it's the wish of the committee that the clerk also provide copies for the committee members. Does anyone else wish to ask questions of Alderman White?

Mr. Elston: Just a couple of questions quickly. The second last paragraph of your statement indicated there was not a single ethnic, racial, et cetera; have you had anyone come to you saying he is well pleased with this bill? Has anyone come to you in that sort of framework?

Alderman White: No. I'm aware that the Metro police association supports the bill or is prepared to co-operate with the bill.

Mr. Elston: But as an alderman what have you got?

Alderman White: As far as constituents go in the wider constituencies of the city or simply in my ward, no, I have had nobody come forward to say he thinks this bill is an improvement over the previous one or that he supports this bill.

Mr. Elston: I understand, as an addition here, that you are helping with the CIRPA program.

Alderman White: Yes.

Mr. Elston: At this early stage in the operation of the program, can you give us any idea what percentage of the people who have called you would say they are afraid to go anywhere else with their complaints because of these reprisals? It's a difficult thing to try to quantify, I know, but we are trying to get some idea of the public feeling for this particular bill and for the complaints procedure they will have to follow if they want to get into it in an official capacity.

Mr. White: Let's narrow it down a little bit. I have actually been on call on the phone line for a few shifts on my own, during which time I have had perhaps 10 complaints that are worth following up, that we're looking at. Out of those I would say approximately five--and obviously I haven't got the precise data in front of me--did say they were worried about going to the police complaints bureau. In some cases complainants had in fact called the station, for example, from which the officer who allegedly committed the misconduct had come, and had been referred to the complaints bureau. Nevertheless, they were very reluctant to proceed that way.

11:40 a.m.

Mr. Elston: With respect to some of the investigations, you have suggested we make amendments that would alter Bill 68. I understand you are looking for a completely independent investigation. You suggest that would be beneficial. We had a suggestion this morning from a previous witness who indicated that perhaps one way of dealing with the problem of perceptions by the public would be to have an investigation that was conducted jointly by police investigators and an investigator from the PCC. What are your feelings on an investigation along those lines?

Alderman White: I do not know what advantage that brings. Obviously an independent investigator would like to rely on police co-operation, trying to get what information the police may have. I don't understand what the advantage is of having a joint investigation. In my view, it should be as independent as possible, and if it is always a joint investigation, then I think that continues to be a flaw.

Mr. Elston: We have had some indication from the Deputy Solicitor General that discussions are under way between Mr. Linden and the chief--I understand it to be the chief anyway--to have a means set up to have co-investigative operations on a particular case. Do you see that as helping the public perspective in that there will be surveillance, I presume, or at least a surveillance factor there by an independent individual?

Alderman White: I think that is probably preferable, if the investigator is involved right from the beginning. That may improve the perception of this as being overseen by somebody independent. The public would really have to be assured, I think, that he has his own powers and that the police are working for him, not conducting their own investigation. But I think there are still going to be problems with that.

Mr. Elston: Okay, we are getting into a secondary area of difficulty, that is, determining when we might have a co-investigation or when we need to have the 30-day period waived and the PCC come in initially. Have you any suggestions how we, as a committee, might determine what is a minor and what is a major complaint that would require independent investigation, if we were to put amendments to this bill?

Alderman White: I'm starting from the assumption that it is preferable to have an independent investigation all the time. I think the thing is seriously flawed if, in most instances, the police are investigating themselves.

Mr. Elston: With that understanding then, can you help us to determine what situations might be described as major and what situations might be described as minor?

Alderman White: I think major is certainly any situation where there is physical abuse. Possibly if it is verbal abuse, that is a different situation, but I would qualify that a bit. If a police officer makes racial comments to a citizen, I think that should be considered major in this day and age. If, for example,

he is dealing with a member of the homosexual community and uses insulting terms, such as faggot or whatever, in this day and age I think that should be considered very serious. That is, right now, the source of some very great tensions in the city of Toronto. Obviously, if the officer has set up a citizen and planted hash or something like that, or whatever, that is very serious.

Mr. Wrye: Going back to your experiences, albeit limited, with CIRPA, on the nights you have been on the phones you have had a number of complaints where people have told you they have already called the particular division and been referred to the complaints bureau. At that point they have been reluctant to proceed. I do not know whether you explored this with them, but I would be interested to know why they were reluctant to proceed when they were just referred to the bureau, to take their complaints to that group.

I can see a system, as you can appreciate, even if we had an independent civilian investigation right at the beginning, where if I were to call--let us use the one near here--52 division with a complaint, they would say, "We can take it, but you may wish to lay it with the public complaints bureau in the morning." I do not know why they did not proceed. I am interested in knowing what you explored with them.

Alderman White: I thought I stated there is a perception that reprisals can result. They have had a friend who proceeded that way, who had something minor such as harassing phone calls and that sort of thing. They are just reluctant to start proceedings. I suppose you might be asking why they are calling the police station in the first place.

Mr. Wrye: I find that curious.

Alderman White: An incident occurs. They are angry. They get on the phone. They want to complain some way. But then when they cool down a little, they worry about seriously proceeding with the complaints bureau.

Mr. Wrye: Have you in your role as alderman had any occasion to have firsthand knowledge of threats of charges or intimidations that have followed a complaint or have followed the determination by a citizen that he or she would lay a complaint? Have you had any run-ins with that? We have heard that. That has been a continuing theme and perhaps it is simply an outgrowth of some of the things Judge Givens has said. Have you had any firsthand knowledge of that happening?

Alderman White: I am sorry. I cannot understand what you are saying.

Mr. Wrye: Rather than just hearing that a friend of a friend said there was intimidation or harassing phone calls, or whatever, have you ever had any firsthand knowledge of that, where citizens in your ward have come to you and said, "I was going to lay a complaint and as soon as I laid the complaint I had a harassing phone call," or, "I was told if I laid the complaint there would be charges"?

Alderman White: Yes, I have had a few of those. I have been alderman now for about five years and I have had maybe two or three. I have not had a lot. Obviously, as a result of CIRPA and the publicity surrounding it, I have run into it more. In my own constituency, partly as a reflection of the part of the city I represent, the number of complaints against the police coming into my office has been fairly limited compared with other wards in this city. So I have had only a few, and I have not had firsthand knowledge in my constituency in that period of time.

Mr. Wrye: Given the fact you have held out for an independent investigation, and I appreciate your position on the matter, given the fact the bill right now is, in your opinion, fundamentally flawed, if it were the best that could be done, would you perceive an investigation such as Mr. Elston suggested to you and the previous witness talked about--a two-member team, one from the department and one an independent investigator, perhaps under the jurisdiction of the PCC--would that be a significant enough improvement in the current legislation to bring on board these various visible minorities, ethnic, racial and otherwise, and have them support the bill in a way that would make it work?

Alderman White: I am not sure. I am not sure whether Mr. Elston was suggesting this would always be the case or only in certain circumstances.

Mr. Wrye: If it were always the case?

Alderman White: This proposal has never been discussed publicly before, so I hate to speak for them.

Mr. Wrye: Give me your personal reaction.

Alderman White: It may improve the bill to some extent. It may be worth adopting the bill if that were done, but I hate to speak for them, so I really only speak for myself when I say that.

11:50 a.m.

Mr. Philip: Excuse me, Mr. Chairman, I found the article that had quotations by Philip Givens that I considered intemperate and it turns out that it was in relationship to a group that Alderman White is a member of, namely, the citizens group that appeared before us earlier. His quotation on July 14, 1981, was in the Globe and Mail.

You will recall that this group clearly showed their intentions and answered questions, and showed themselves to be a fairly moderate organization. Philip Givens is quoted as saying that this group was "encouraging a system of espionage and sabotage of law enforcement officers who are sworn to uphold the law." I consider that highly inflammatory and leading to more discontent in the community, and it certainly says something about Philip Givens.

Alderman White: That was not specifically what I was referring to. The one I was referring to was a bit older.

Mr. Philip: I realize that, now I have found the article.

Mr. Williams: Just for the record, Mr. Philip keeps insisting that that particular organization in question was a very moderate organization. If one reviews the evidence that was given to the committee on that particular occasion you will find a remarkable difference between what came out in the evidence and his perception of being moderate.

I think the evidence clearly demonstrated that, in fact, a preponderance of the membership in the organization were of groups or individuals who perhaps are publicly known for having views that are less than moderate.

Mr. Philip: I am sure the two gentlemen sitting behind Mr. Williams are considered raving radicals from his point of view on the political spectrum, but that is neither here nor there.

Mr. Piché: I object to that.

Alderman White: Just on that, Sidney Linden did indicate two weeks ago that he thought CIRPA was complementary to the work that he is now doing.

Mr. Piché: Mr. Chairman, before we adjourn can I bring a matter up about sitting on Friday? It makes it difficult for the members who are living far away from Toronto, and I am just wondering if it would interfere with the committee's work if we did not have to sit on a Friday. You do not have to answer now, it could be looked into.

Mr. Chairman: One thing is occurring though, and that is that we do have a couple of people who wish to appear before us and I think we should accommodate them. That is on for Tuesday morning, so we are getting a little short of time for our clause by clause, so it is a question of whether we can cut out days like Fridays.

Mr. Mitchell: If I may, on that particular issue, it was raised during the previous sittings of the justice committee. In fact, I recognize some members who are sitting representing the other parties who at that time concurred that for those of us who have constituencies quite some distance apart and who have--like themselves, albeit they are more from the Metropolitan region--very busy weekends, to sit the Friday and then be back for our constituency operations does create a problem for us.

What has been requested by Mr. Piché is that if you would be so kind as to examine the schedule and if time can be adjusted, it would be our wish that this committee would consider avoiding the Friday sittings, if at all possible. I recognize that we all have constituency work, it is not that argument at all, but merely the fact that--and I think it was the previous member of the Liberal Party, Margaret Campbell, who said she recognized there were problems for those members from a distance. Otherwise, it certainly creates a problem of substitutions and it makes it difficult to obtain substitutions for a Friday as well.

Mr. Laughren: I think Margaret Campbell always did have an understanding of many of us who live a long way from Toronto. The point about this Friday is that my schedule shows only a meeting on Friday morning and it is not as though it is going to affect a lot of groups. Possibly it could be worked out.

Mr. Piché: Could that be moved up to Thursday?

Mr. Chairman: That seems to be the consensus. We will take the schedule under advisement with Friday in particular mind.

Mr. Mitchell: Mr. Chairman, a consideration might be that an evening sitting may be acceptable to the committee in lieu of a Friday. I only throw that out as a suggestion.

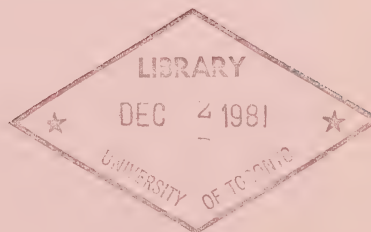
Mr. Piché: Duty calls.

Mr. Chairman: We'll adjourn until two this afternoon.

The committee recessed at 11:57 a.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
TUESDAY, SEPTEMBER 29, 1981
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Gordon, J. K. (Sudbury PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Philip, E. T. (Etobicoke NDP)
Piché, R. L. (Cochrane North PC)
Wrye, W. M. (Windsor-Sandwich L)

Substitution:

Kennedy, R. D. (Mississauga South PC) for Mr. Andrewes

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister

Ritchie, J. M., Director, Office of Legal Services

Witnesses:

From the National Association of Canadians of Origins in India:

Pandya, Dr. D. V., President, Toronto Chapter

Raha, P., Vice-President, National Executive

From the Religious Leaders Concerned about Racism and Human Rights:

Bhagan, Reverend K.

Coles, Reverend S.

Horsch, Reverend H.

Williams, Reverend J.

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, September 29, 1981

The committee resumed at 2:21 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Gentlemen, we have a quorum. Mr. Philip is moving in and out of the room. We will count him as being present. We have a delegation from the Religious Leaders Concerned about Racism and Human Rights: the Reverends Ken Bhagan, Stuart Coles, Hartmut Horsch and Joe Williams. Would you please come to the front? Are there four spokesmen or is there one or something in between?

Reverend Bhagan: All four of us will be speaking.

Mr. Chairman: Men of the cloth would each like to have something to say otherwise they would be out of character.

Reverend Bhagan: Right on.

Mr. Mitchell: You are editorializing, Mr. Chairman.

Mr. Chairman: Yes, I am.

Reverend Bhagan: My name is Ken Bhagan. I am the chairman of the committee. On my right is Hartmut Horsch. On my extreme left is Stuart Coles. Next to me on my left is Joe Williams.

First of all, we want to thank the Solicitor General (Mr. McMurtry) for presenting the bill to the Legislature. At least when it got to committee, we could make deputations. We want to thank him for that. We also want to thank the standing committee on administration of justice for having us here this afternoon to present our brief.

A few words about Religious Leaders Concerned about Racism and Human Rights: I want to make it very clear that we are not here representing our churches' official positions. Religious Leaders Concerned about Racism and Human Rights is a group of religious leaders from different churches who are concerned about racism and human rights, who are concerned about Bill 68. From the very outset, we are not here as official representatives of our churches. We are here as concerned religious leaders.

Stuart Coles is going to do the first part of the brief,

then Hartmut Horsch will do the second part. I will do the recommendations and Joe Williams will conclude.

Second, contrary to a lot of press, we are convinced there is a lot of minority support opposing the bill. We have read and we have heard a lot of minority people are not representing anyone. I know because I am also involved with another group of minority religious leaders who are very concerned about Bill 68. I am also the president of that group: the Canadian-Caribbean Operation Ministerial Fellowship, a group of minority ministers who are very much opposed to and concerned about some aspects of Bill 68.

Now we will start with the brief. I will ask Stuart to continue.

Reverend Coles: Mr. Chairman and friends, this group, Religious Leaders Concerned about Racism and Human Rights, submits this brief as part of an ongoing effort to promote a better relationship between police and minorities in Metropolitan Toronto. Our members include religious leaders of the Jewish faith, the Moslem faith, the Catholic Church, the United Church, the Anglican Church, the Presbyterian Church, the Lutheran Church, the Baptist Church and the African Methodist Episcopal Church.

As a small addendum to Ken's opening distinction about official representation and who we are, we have quite a body of membership. I wondered if you got another impression from Ken's statement. He may give you details of that membership.

We are members of religious traditions that believe in a specific kind of public order, not an order which maintains by force relationships of injustice and inequality. Our faith traditions teach us rather to believe in and struggle for a true social peace. Such peace can only be built on respect and just treatment for all groups and individuals in our society. Where it exists, there is markedly less need for policing, and that which does exist is based far more on problem-solving approaches than on use of force and judicial procedures.

The establishment of such an order of social peace requires that a concrete road be travelled--that word "concrete" is used in the abstract here--the road of redressing actual inequalities, of extending rights in society to those actually deprived of them. Our traditions, therefore, place the focus of God's attention and concern and ours on those sisters and brothers who are held at unfair disadvantage in our community. It is by struggling with them for their rights and dignity that we see the only true public order being advanced.

Of consequent concern to us, therefore, is the response of the province's minority communities to Bill 68 in its present form. We are dissatisfied with the perceived lack of broad consultation with minority communities before the present draft legislation was prepared. A broad and open-minded dialogue with the communities whose complaints against police actions and procedures have contributed so much to the impetus for this legislation would have been able to obviate much of the resentment

and opposition that must now be directed at this bill in its present form.

Reverend Horsch: It is clear to us, from years of experience in and from such communities, that there can be no real confidence in police review process unless the agency responsible is separate and distinct from the police department and investigates all complaints from the very beginning, using its own independent staff.

The legislation regulating complaints lodged through such an agency should scrupulously assure that police have no greater power to lay public mischief charges or to sue complainants in civil courts than does the public at large. All too frequently in the past such charges and suits, or the threat of them, have been used to intimidate and discourage complainants from coming forward. We find a lack of concern at curbing access to such methods of intimidation by police a grave omission in the proposed legislation.

We wish to add our voices to those of many others who see an inherent conflict of interest when the same person is Attorney General and Solicitor General. The Attorney General is in an untenable position when his duty as chief law enforcement officer of the province places him under the obligation of prosecuting police officers for whom he is responsible as Solicitor General. The police review agency proposed in this bill should report to some other minister until this conflict of interest is resolved by separating the portfolios of Attorney General and Solicitor General.

Reverend Bhagan: Recommendations: Bill 68 should be amended to ensure that:

1. The complaints process is completely independent of the police department.

2. The complaints agency investigates every allegation of police misconduct from the very beginning.

2:30 p.m.

3. Complainants receive assurance under this legislation that they will be duly protected from intimidation through improper use of criminal prosecution (for example, public mischief) and civil suits (for example, libel).

4. The posts of Attorney General and Solicitor General should be separated and, until they are, the proposed police review agency should report to some other minister.

Reverend Williams: Conclusion: We speak as members of religious traditions concerned with the creation of a social peace in our community built on justice and equality. We consider that recourse to policing by force not only to a great degree determines the level of resistance to police among society's minorities, but is also a measure of our failure at a just community consensus.

Given the level of distrust of the policing function which has already built up, especially among minority groups in our province, legislation to assure fair and independent investigation of police actions is a priority. This bill establishing such investigation procedures will not fulfil its purpose unless it is substantially rewritten to incorporate the deep and widespread concerns of these minority groups.

Respectfully submitted, Religious Leaders Concerned about Racism and Human Rights.

Mr. Chairman: Thank you. That is the submission, is it?

The Deputy Attorney General.

An hon. member: Solicitor General.

An hon. member: You are getting confused too.

Mr. Philip: You've just proved his point.

Mr. Hilton: Gentlemen, are you aware that only in Ontario and Alberta, among the provinces in Canada, I believe, is there any separation at all, even formally, between the offices of Attorney General and Solicitor General?

Reverend Bhagan: Yes.

Mr. Philip: Thank you for an interesting brief. We're going to be placed, in a very short time, in a position, if the kind of suggestions you have made are not accepted by the majority government, of saying either, "This bill is better than nothing," and voting for it, or saying, "This bill is so bad that, morally or ethically, we have no alternative but to vote against it." Assuming the Solicitor General does not go along with your request for an independent complaints process, what would your opinion be? If you were in my shoes, would you vote for or against the bill? Is this bill better than nothing or is it better to simply throw out the bill?

Reverend Bhagan: That is a very interesting question. It kind of puts us on the spot. I would have to say the bill should be thrown out.

Mr. Philip: Is that the position of each of you? I see two heads nodding. I gather that is the unanimous position.

Mr. Laughren: Is that because you do not want to have the appearance of independent investigations?

Reverend Bhagan: Mr. Chairman, the question is related to our second recommendation, which is that we believe that every allegation of police misconduct should be investigated by someone outside the police force. There is no trust in the community in the police complaints procedure, at least in the minority community, and on that basis I suggest--

Mr. Philip: May I carry on with my questioning, Mr. Chairman?

Mr. Wrye: Could I have a supplementary?

The question Mr. Philip raises is one that is beginning to bother those of us who perhaps agree with you on one and two. I want to pursue this by asking whether you think--apparently you don't think, and I am wondering why--some pilot project would be preferable to the kind of deterioration of police/community relations we have seen in Toronto that has sparked a bill, albeit in your opinion a very flawed bill. I am really caught on the horns of a dilemma here.

Reverend Williams: I would like to offer a comment as to why I said yes to the first question. One of the main problems among the men and women who make up the United Church membership is, if they have not encountered this problem directly, they do not believe in it. Something has been soaked into us to believe automatically the police must be right. So anything that keeps covering over this situation is mischievous in the serious sense of that word. That is why I feel it is better to have no bill, because then the problem would be forced out into the open, and many of the unknowing citizens of Ontario would believe the victims when they cry out about what has happened to them, especially when they have tried to complain.

Mr. Hilton: Please do not speak for me.

Mr. Williams: I am just speaking about the membership of the church, as I know it.

Mr. Hilton: I can bring you a whole congregation that does not agree with you.

Mr. Laughren: Isn't that interesting.

Mr. Philip: I would suggest that if the deputy minister wants to make political statements he sit there and make them from the chair.

Mr. Laughren: He also goes to the people every four years.

Mr. Philip: I go to the people every four years and I answer to them. Sitting in that chair, in the Solicitor General's chair, I do not mind the Solicitor General or the parliamentary assistant making political statements. But those kind of political statements, if he wants to make them, he should make as a citizen and sit out there and take questions the same as the rest of the people do.

Mr. Mitchell: I would suggest that the politics of the statement were made by you, Mr. Philip.

Mr. Hilton: I'm sorry to cause this trouble, Mr. Chairman, but the problem here is that a man made a statement about the membership of the United Church. Now I have been active,

I have been the leader of my church, chairman of the board of stewards and held many other offices in my church, and I do not agree with him. I resent so many people in the United Church making statements that the members of the United Church--

Mr. Laughren: You are sitting in the chair of the Deputy Solicitor General--

Mr. Hilton: I am still an individual.

Mr. Mitchell: --because I similarly am a member of the United Church.

Mr. Laughren: Holy mackerel.

Mr. Philip: I have no objection to you making the statement because you are an elected politician. You have every right to do so. If you wish to make that statement, that is fine. I do have an objection to a public servant making political statements.

Reverend Williams: As I tried to tell you, Mr. Chairman, I thought I was speaking only for the members of my congregation. If I did not make that clear--

Mr. Hilton: I did not understand it, and if that is what you meant, sir, then I apologize for my remarks.

Reverend Williams: One of my bewilderments is that you, who have cried out from other congregations, I think are corroborating the concern I was trying to voice.

Reverend Bagan: Mr. Chairman, I just want to follow with an example. Just recently an Anglo-Saxon reporter phoned me and said: "I want to share something with you. I was at Victoria and Dundas this afternoon and I saw a police officer running behind a young black man and these other young black people behind the police officer." So he arrived on the scene and, meantime, about seven police cars had arrived and they arrested the young man and put him in handcuffs.

A young black lady was looking at the whole scene and this Anglo-Saxon reporter came up and said, "What is going on?" and nobody would say anything. So the officers took away the young man and this lady said, "There is no justice in this country," rightfully or wrongfully. The officer said to her, "If you don't like it here you can go back where you come from." The reporter said, "That is not a nice thing to say to the lady," and the policeman said, "Mind your own business."

2:40 p.m.

So this reporter said, "What is your number?" and the policeman shouted his number. The reporter felt he should go and lodge a complaint, because that was not a good remark to make to the lady. So he went down to 52 division and he laid a complaint. He said he was very intimidated there. He said he got there and said he wanted to speak to the duty sergeant but they did not give him what you would call a pleasant welcome.

After insisting, he spoke to the duty sergeant and told him what he was there for. The duty sergeant said: "Phone me back on Wednesday. I will not be here but speak to the duty sergeant who is on." So he phoned back on Wednesday, could not get to the duty sergeant to whom he was supposed to speak, but got to the third duty sergeant, who said, "Well, you know these young officers nowadays. He was probably having a bad day and I hope it is okay."

This reporter said he could not believe it. He was shocked. He said, "Is that it?" The sergeant said, "Fine." He thought he had lodged a complaint with the police complaints bureau, which is not at 52 division. When he shared this with me I said, "You did not even get to the complaints bureau."

But the point I am making is, here was an Anglo-Saxon person very intimidated as a concerned citizen. He said to me, "I can see why so many minority people would not go and complain." We realize that it is a pilot project, but as long as the police continue to investigate from the very beginning, we will continue to have that mistrust.

Mr. Philip: The Solicitor General has indicated that he has spoken to many hundreds of people during the past year, indicating that there is significant misunderstanding of the bill, and also that there is some support out there for the bill. Have you or any of the people you have had dealings with been spoken to by the Solicitor General or by representatives of his ministry?

Reverend Bhagan: No, Mr. Philip.

Mr. Philip: With regard to the communities that you are representing, you would concur with the answer that has been given by every other community group, that you have not been contacted in any way?

Reverend Bhagan: Right.

Mr. Philip: Would you also agree that the groups that you have had contact with understand what is in the bill?

Reverend Bhagan: Yes, I would say so.

Reverend Williams: Yes, by and large I think they understand what is the intent of the bill. I think we can safely say that the people whom we have talked to and were in contact with have a good grip of what it is saying.

Mr. Philip: Have you found one person in the communities that you are serving as priests and as pastors who is supportive of the bill in its present form?

Reverend Williams: No, not wholly; I cannot say that I did.

Mr. Philip: Do you feel if the bill goes through in its present form that people in your communities will feel comfortable in coming forward and will make use of the complaint service? Or will they be intimidated and remain aloof of the process?

Reverend Bhagan: I would say the people I deal with would not make use of the process at all.

Mr. Philip: Is that true of each of you?

Reverend Williams: Yes, probably I would agree with that.

Mr. Williams: I was interested in your comments on page two, the third paragraph. Perhaps you could clarify it for me. "The legislation regulating complaints lodged through such an agency should scrupulously assure that police have no greater power to lay public mischief charges or to sue complainants in civil court than do the public at large."

What led you to make that statement in your brief today? What is it that gives you concern that the police somehow do wield, or will be given under the legislation, some greater power than the public at large has in regard to these matters?

Reverend Coles: Part of our reason for having that observation in our material is that it has become a matter of anxiety among the minority groups that they do run the risk of being charged with public mischief if they lay a complaint. I think it is a simple fact that the police are more familiar with the powers of the law to get after people than the minority communities are.

Mr. Williams: You are suggesting that a citizen at large could not lay a similar charge against a police officer. He is a citizen. The fact that he might also be a police officer doesn't make his rights different from those of any other citizen in regard to application of the Criminal Code or the civil code as far as laying charges of this nature is concerned.

If someone lays a public mischief charge that is vexatious and without any foundation in fact, I suppose they would have to do that at the risk of being charged. But I suppose the same could be said against the police officer. I do not see that any distinction exists in law today, nor am I aware that there is anything in the bill that would distinguish between police officers as citizens and any other person among the citizenry. That is why I could not quite understand the concern that has been expressed here. There is nothing in the bill that I am aware of that would raise that type of concern.

Reverend Coles: It is partly this deep instinct in our culture to trust and respect the public authorities. Very few of us would think of accusing a police officer of public mischief. You just do not expect that. It takes a tremendous leap of imagination to consider that that might be the redress for those black people that Mr. Bhagan told us about; that they might actually take the initiative against this man who had terrorized them. Because he was a police officer you do not think of putting him under the law; you feel he is the law. This is the problem we find.

Mr. Williams: I see the context within which you are

expressing your concern. But putting it the other way around, I do not see how, using that argument, that the police would have some greater power to lay that type of charge than the citizen at large. They may be less reluctant to lay that type of charge, but they certainly do not have any greater power. In fact they have no greater power than is prescribed at present under the laws of the land, and which is available to any citizen.

Reverend Coles: Rightly or wrongly, many of these minority people feel at a disadvantage in any kind of confrontation with police authority. Some of us are here today because we feel they have all too much ground for that distrust and that anxiety. I think it is incumbent on this committee of the Legislature to find out why there is that intimidation and that fear, that feeling that it is not a fair struggle if I take on a police officer.

Mr. Williams: I just want to be clear on a point in the leading questions that Mr. Philip was presenting to you earlier, as to whether or not, if you had your druthers, you would accept a bill that you feel is, structurally speaking, not to your liking. In such a case, would you prefer that there be no bill at all? I understood it was put to you on the basis of whether, as a moral or ethical issue, you would take a position of rejecting the bill, or of supporting a bill with which you were not totally in accord.

2:50 p.m.

If that was the question which I understood was being put to you, I feel hard pressed to suggest that, out of the structuring of the bill, the mechanics of how it would work, you can find a moral or ethical issue that would give you that type of consternation and concern as to reject the bill out of hand because its mechanics are structured in a way that is not to your liking.

Reverend Bhagan: Mr. Chairman, I shall repeat what I said. There is no minority trust and support for the bill as it is. That is the first point.

Secondly, if you want to pass the bill into law, you know that the people whom it affects the most, the minority communities, are not going to use the commission because they know the police are going to investigate the complaints from the very outset. That is the key to the rejection of the bill.

Reverend Horsch: If I may add something here, I do not think it is simply a question of structure that is involved here; I think an issue of trust is involved as well. I am not a lawyer, so do not quote me on these things, but I feel that justice must not only be done, it must be seen to be done.

If it appears that the police have greater powers, and it would seem that it appears that way, then people who are mistrustful of a government to begin with, or of governmental powers, and are intimidated by the police uniform to begin with, will be very hard pressed to come forward to take steps against such an agency. In other words, what I am saying is that there is

a justice issue involved; we must not only do the right thing, we must also be seen to do the right thing.

Reverend Coles: I should like to offer the second paragraph of our brief as part of an answer to Mr. Williams' question. We think it is quite urgent for Canadian--

Mr. Williams: The second paragraph on page one?

Reverend Coles: Yes. It is a theological essay, really, on the nature of justice and the nature of order. We think it is somewhat at odds with the dominant notion of order in our society. I just want you to notice that we have offered it to you for your reflection.

From all over the world the news is coming to Canada that, formerly, structures of justice, including the police, have been corrupted into structures of brutality and repression. Now, why did that happen in those societies? Are they more malicious and more malignant than we are, or is it because they were unguarded at this point? The agencies of justice must be for the weak people, the minority people and the people without roots and without prestige in our society, as much as for the bodies of prestige and the bodies of success.

This is another notion of order here, and in that notion you would not speak of a police force; you would speak of public servants. Where it talks here of policing as problem solving, I imagine if you have heard from policemen in this committee, you have heard how perplexing it is to be an effective and conscientious police person in our society because once in a while they are called to deal with criminal matters, which is what most of their training is for. Most of the time they are called to function in a human and personal way, in problem solving in a social role.

What is struggling here is another notion of public order where we strengthen one another and do not repress each other. The problem is to change the image of the police officer, especially for those who come to Canada from places where the police are really the source of terror and tyranny. How do you change over to say, "This policeman is my friend; he is my defender"? That is the crunch. That is why some of us think that a bad bill here is worse than no bill, because it allows Canada to drift into this place where the police become the agent of the powerful and the defender of the powerful, rather than impartial agents of justice towards the little people, the foolish people, the misbehaving people, as well as the strong and the successful.

Mr. Williams: I understand, I hear what you are saying and I accept what you are saying, but you are not implying, are you, in that statement that in order to maintain law and order in our society today, the concern is that there is an element of force behind that law and order that you find offensive and that goes against your deepest concerns and beliefs, et cetera?

Reverend Coles: Force ought to be a bad second to understanding, to social trust, to what is called social peace

here. Many of us in this room grew up in neighbourhoods where there was trust and peace, and the problem is how do you recover that for massive urban situations where we are strangers to each other and therefore tend to be afraid of each other.

That is where we think the police role has to be changed dramatically to be the befriender of the people rather than the defender of the dominant system which is not there in the interests of the minority. This is the kind of shift we would like to see in the consciousness of the citizens and particularly in the consciousness of the police and those who administer police action, that they be the builders of neighbourhoods rather than the defenders of privilege and the defenders of power.

Mr. Williams: Will you take your views to the point of saying that in this country of Canada today there is disrespect for the law enforcement agencies throughout the country, even by the minority factions in this country?

Reverend Coles: I would not use the word "disrespect." There is a wrong kind of respect, there is a terrified kind of respect. They are afraid to claim their rights against the police. Possibly what I am trying to get at is that we have to build another kind of respect, not one based on fear and on tyranny but based on the fact that that person is there on my behalf as well as on behalf of the powerful.

Mr. Williams: You accept the need for the law enforcement agency process, do you not?

Reverend Coles: As a bad second. Very few of our citizens need to have the law enforced on them. What most of them need is to understand the law and be helped to live together in neighbourliness, in humaneness. If you talk to police people, that is what they work at mostly, only it is not the image that creates the police force.

Mr. Williams: Just as a matter of interest, let us look at an example. I do not think up until the time it happened that there was anything unusual in the community of Moncton in New Brunswick where the law enforcement agencies were not available to the public for a given period of time and the orderly aspect of society seemed to disintegrate rather quickly to the point of its being rather frightening. Did it not give you some concern that where you go to the other extreme where you do not have a law enforcement agency element, without the law enforcement the order breaks down very quickly?

3 p.m.

Reverend Coles: There certainly is a minority in all society that is anarchic and destructive, and so far we have to accept the need for, may I say, a police force. It seems to me in a healthy society that is very much the secondary role. The primary role is that most of those people respect each other. Even in Bathurst, New Brunswick, the massive mood was one of coming together to defend the community against these few mischievous people and a demand, really, for a return to order.

Mr. Williams: Thank you for your comments.

Reverend Coles: I think I would like to tell you that one of the reasons I am here today is that Albert Johnson was shot within 50 yards of my church. It was not that there were cruel or destructive or maniacal police officers at work; it was that the situation was a bad one in which policemen were asked to do something they did not know what to do with. They were asked to deal with a madman, a man who was frenzied with his worries and his fears. I guess what some of us want is a system in which that family would never have been terrified by policemen, it would have been helped by them.

It is the notion of public order that is here in this paragraph and not one that if this man is doing things I do not understand, and I am a policeman, the best thing I can do with him is shoot him before he does more damage. That is a terrible fix for a policeman to get into, and I guess I would like a law and a complaint procedure that protects us against that.

Reverend Horsch: If I may make a comment regarding your concern, I think it is well taken. Maybe as a matter of theology I might disagree with my colleague on a few points about the capabilities of human nature but that is beside the point here. I think that at the present time the police have all the power at their disposal to deal with any lawbreaking where they need to deal with it. Our concerns are not on that level. They are on the other level where the police use their power beyond that which is reasonable and beyond that which is acceptable in our society. That is where our concern lies.

Mr. Hilton: Mr. Coles, I thank you very much for your remarks which I thought were very timely. We are greatly concerned, those of us who have a responsibility for police work. In the things that you spoke about we are endeavouring to increase the involvement of community service officers and also the understanding of the minority groups with whom they work and having those groups understand some of the concerns and problems of community service officers.

We are involved in training--and it is not before this committee so I am not going to enlarge on it--at the police college and at various police institutions where we try to see that our officers know their job. I would be greatly obliged if at some time you could see free to give me a call so that we might discuss some of these broader concerns that you have. I feel you have expressed them very well and, having regard to where your church is located, it probably would be very helpful to me and to others to hear. Could you see fit to call me some time?

Reverend Coles: Why will you not give us the process that fits with what you just said?

Mr. MacQuarrie: I was going to follow up a bit on Mr. Williams' line of questions. First of all, I agree that the role of the peace officer in today's society is a very difficult one. In some jurisdictions particularly, we tend to look at them more

as social workers with sidearms than any strong-arm characters that you hire more for strength than you do for other skills.

Getting back to the paragraph on page two, Mr. Williams dealt with the first sentence of the paragraph and I would like to look at the second sentence for a moment, where you speak of charges, namely, public mischief and the threat of civil actions, having been used to intimidate. Do any of you people have any personal knowledge of threats of intimidation?

Reverend Bhagan: Mr. Chairman, I know people who have lodged complaints and won, and then they were charged.

Mr. MacQuarrie: Because, as I understand it, the threat of criminal action to prevent the carrying out of any lawful activity is in itself a crime. I just wonder if you people have any firsthand knowledge of threats and intimidation: "If you proceed with this complaint, we are going to lay a public mischief charge"; that sort of thing. Or is this just based on information you have received from others?

Reverend Bhagan: I know a couple of people who came and shared that with me.

Mr. MacQuarrie: In terms of the disposal of complaints at present, are you aware that a large proportion of the complaints being made against police officers at present are being disposed of informally to the complainant's satisfaction?

If I could pose a question to the deputy minister, is it something in the order of 80 per cent?

Mr. Hilton: Yes.

Mr. Wrye: Do we have that figure broken down anywhere?

Mr. Hilton: --I just don't know that it has been kept in a broken-down form, but we are still trying to get it for you.

Mr. MacQuarrie: What I was trying to get at was some indication of the gravity of the real problem. Is the perceived problem larger than the real problem?

Reverend Coles: Could I ask for a clarification, Mr. Chairman? Does that 80 per cent apply to Ontario generally or Metro specifically?

Mr. Hilton: Metro.

Mr. Philip: Supplementary to that though, the Deputy Solicitor General has indicated they don't know how those are disposed of. They may have been disposed of in the way that was indicated when the chap went to the police station and nothing was done. We still have not been provided with any breakdown as to what this position means. It may simply mean that somebody gives up as happened in the case of the fellow who tried to get through three times and was unsuccessful in getting his complaint answered in a satisfactory way.

Mr. Williams: Did we get an answer to the question?

Mr. Chairman: Yes, Mr. MacQuarrie did, that it was a possibility that sometimes the perception might be greater than the reality.

Reverend Coles: I would like to say a little more if I could there. I hope Mr. MacQuarrie was recognizing in his question, which I was responding to, that the perception is the crunch part of this thing. It's at least as important as facts. If people have a perception of danger vis-à-vis the police, then whether it's just or unjust, it's a very real social fact that ministers and priests, for example, have to deal with.

3:10 p.m.

Mr. MacQuarrie: Now as ministers--I suppose we can get into philosophical discussions here about order and the nature of rights, but I was reminded by a young chap here just a few moments ago that running along with rights, as their counterpart, were duties, and the duties of a person as a Canadian citizen, as a resident of Metropolitan Toronto, are--why do we tend to forget duties in all of these presentations? Why are always looking at rights and are the people for whom you speak as aware as they might or should be of their duties? Is not your responsibility in a sense to make them aware of their duties as citizens?

3:10 p.m.

Reverend Coles: I would respond as an Anglo-Saxon, if I might here.

One of the impressions I have is that the minorities come into Canadian life basically because they want to be part of our life. They choose to come and they come with high expectations and a high quality vision of who we are and what, for example, the peace officer is about in Canadian society.

I am here today to try to prevent that expectation from being completely lost. So I would say, just as one Anglo-Saxon citizen of Ontario and a minister of the Christian faith in that society, that by and large my kind of people perceive a high sense of duty and a high sense of commitment on the part of these new Canadians. I thought I would like to say that to Mr. MacQuarrie.

Mr. MacQuarrie: That's very encouraging to hear.

Reverend Williams: Just to go on to this, I don't think the question is we demand rights and we do not think about duties. People come from other countries and they know that as citizens they have to abide by the laws that are there. Their duty is to live within that society and contribute to that society.

When the very structure that should assist them to make expression and to carry out those duties intimidates and prohibits them, then they are at a loss to perform those duties. If we may go back to Ken's illustration about a reporter, that woman

standing there, it was her duty to help that reporter. She had seen and that was her duty, but she couldn't perform her duty as she might have wanted to because she was intimidated.

Mr. MacQuarrie: On the general question of police rights to lay a charge of public mischief, when a complaint lodged by a citizen against a police officer is clearly frivolous, vexatious or harassment in itself, do you not feel that the police officer should have the right to lay a charge of public mischief, if in fact it is public mischief?

Reverend Coles: We just don't know of anybody who has done that to the police. Maybe there are such people, but they aren't the ones who come to our attention.

Mr. MacQuarrie: How many charges of public mischief laid by the police have you been aware of? Maybe I could ask the Deputy Solicitor General, how many charges of public mischief have been laid by the police?

Mr. Hilton: I will find out, sir. I do not know.

Reverend Horsch: Mr. Chairman, if I might try to say the same thing over again as I said before, the facts of the matter are less important in this instance than the very possibility that the police have to lay a public mischief charge against someone who complains against them. This is perceived and therefore it is real. They have the power to do so, while the individual citizen, no matter who he may be, will have a hard time laying the same kind of charge. This is the way we understand it.

Mr. MacQuarrie: If the individual's complaint against the police officer is a justifiable complaint, do you feel the present system would accommodate and deal with that complaint? That is the present system; then we'll deal with the system proposed in the bill.

Reverend Horsch: The present?

Mr. MacQuarrie: Are you aware of how many complaints, for instance, were lodged against police officers in Metropolitan Toronto last year?

Reverend Horsch: No, I am not.

Mr. Philip: Are you aware?

Mr. MacQuarrie: Almost 1,000, was it not?

Mr. Hilton: Just about 1,000, yes; 879.

Reverend Coles: The thing that we are strongly aware of is that most people decide not to lay a complaint where there is a case such as Ken Bhagan has reviewed. This is the thing that troubles me, that most people decide it is too dangerous or too stupid a thing to do and they don't do it.

I think that is an important factor that should be tested

when you are looking at this legislation.

Mr. Laughren: I think the strongest arguments for the independent bureau are the attitudes of Mr. MacQuarrie, Mr. McMurtry and Mr. Hilton.

What the committee is struggling with--and we appreciate the comments of this delegation--is whether or not this bill is primarily to protect visible minorities in Metropolitan Toronto and if it is, if visible minorities will benefit most from a good system, whether or not those people should have a say in how the bill is structured--

Reverend Bagan: That's our main theme.

Mr. Laughren: --or whether or not the people who have nothing to fear or have little to gain from a good bill will in their wisdom decide what is best for the visible minorities in Metropolitan Toronto. That is really what this debate in the committee seems to be coming down to. When we get into clause-by-clause, that is what is going to happen.

I wonder if it bothers the delegation the way it bothers me when the debate gets around to duties versus rights. I would like to quote what Mr. McMurtry said the other day. He was talking about visible minorities and he said:

"I would like to make the observation, with the greatest respect, in my experience of working with visible minorities and having spoken to a large number of people who might be generally regarded as members of visible minorities, that the great majority appear not to be active at any particular association that gets involved in these issues." He is talking about these issues that we are talking about.

"I think this is one of the problems that we have in the community, because it has been my experience that the great majority of people who are members of the visible minority are not actively involved in associations that are taking a public position in this area."

It is that kind of view that you are fighting. I wonder how it makes you feel when you argue for a bill that you-- Obviously the government is responding to pressures out there or they wouldn't be bringing in any bill. Something is bothering them or even this bill would not be before the committee or before the Legislature.

What goes through your mind then when you see a bill that obviously is there for a reason? That there have to be problems or the bill wouldn't be there? I am wondering, where does the committee go when it comes to making recommendations on a bill that is supposed to effect the minority view but the government seems to be very tough on making any changes to reflect the views of that same minority?

Reverend Bagan: We are part of a coalition against Bill 68 which is composed mainly of almost 40 minority communities. We

do not know one minority community that supports the bill.

3:20 p.m.

Mr. Laughren: We don't either.

Reverend Bhagan: That is a very disturbing fact that concerns us very much and that is what we try to address in the brief.

Mr. Laughren: I worry that the level of cynicism in the minority community will reach the level of mine if the bill goes through in its present form. When you see those kinds of attitudes expressed both by the Solicitor General the other day and by his parliamentary assistant today, it is a little scary. It's a good indication of why we need a different kind of bill.

Mr. Kennedy: I just have a supplementary on that.

You said, sir, you don't know any groups with which you are in contact who support the bill. How many is that?

With a piece of legislation, delegations come and people from a certain section of society, mostly to whom it applies, are very interested and involved in it, but in general across the populace, if you went out and interviewed 25 people, perhaps 20 would not know. Can you put that into some kind of perspective for the committee, please?

Reverend Bhagan: Sorry, Mr. Chairman, I didn't follow that.

Interjection: You said there were 40.

Reverend Bhagan: Yes, 40. There is a coalition against Bill 68 and there are 40 groups.

Mr. Kennedy: What kind of groups?

Reverend Bhagan: Minority groups.

Mr. Kennedy: How many minority groups are there? Are all the minority groups against it or 40 of the total that you know of who are against it?

Reverend Bhagan: Forty who make up this coalition.

Mr. Kennedy: What is the extent of that representation of all minority groups? I am just trying to get a handle on numbers, if you can help me.

Reverend Bhagan: I really cannot.

Reverend Coles: I would just like to mention the people who are supporting our brief. Is that one way of starting at the answer?

Mr. Kennedy: I can accept 40; you have said 40 groups, yes.

Mr. Elston: Perhaps a description of the nature of those groups would be of some assistance as well.

Reverend Bhagan: There is the National Black Coalition of Canada who were here, the Chinese association.

Mr. Mitchell: By way of supplementary, Mr. Chairman, perhaps this is an answer because I realize Mr. Kennedy was not here. Would these be all the groups that were listed on the sheet put out by CIRPA?

Reverend Bhagan: No, the coalition is separate. It has nothing to do with CIRPA. The Coalition Against Bill 68 is something different.

Mr. Kennedy: I am really asking, who is left?

Reverend Bhagan: I don't know, Mr. Chairman; there may be quite a number of them.

Mr. Kennedy: I think it is important to understand this.

Mr. MacQuarrie: At the time they presented that brief, the coalition indicated there were 26 organizations represented, some of them being umbrella organizations and the largest one, apart from the Ontario Federation of Labour, was the Right to Privacy Committee with 1,200 members apparently.

Mr. Laughren: You seem to skip lightly over the 800,000 members of the Ontario Federation of Labour.

Mr. MacQuarrie: I also see the Canadian Council of Churches, but we have no resolutions or indications from any of--we were advised by the people making the representation that these organizations were represented.

I would be inclined to ask--and I should have at the time--for some documentation to verify the support of the organizations in question. I know the Canadian Council of Churches, for instance, might take some time to get an official resolution through that body.

Reverend Bhagan: But they are part of the coalition.

Reverend Coles: I wonder if I could make a comment here? One of the great dilemmas for a body like the Canadian Council of Churches, which is a national body and terribly harassed with the problem of how they attend to the national issues--how they put major energy into a very specific local context. They would like to express support in general terms but they cannot bring all their guns to bear on a Metro Toronto issue.

Mr. Philip: That would hold true with your own church. The board of evangelism of the United Church might like to take time with something like this but would probably be occupied with

other matters of a more national nature at the present time, would they not?

Mr. Laughren: International.

Mr. Philip: Or international.

Reverend Bhagan: I want to stress again, Mr. Chairman, that the Canadian Council of Churches have endorsed the coalition. They had representatives who came to meetings and proposed the bill.

Mr. Chairman: Thank you. We have four more people who wish to speak. Two of them have spoken before. You have all promised to be very short--we are running overtime. Would you ask either one question or keep it very short. Would you please adhere to that or I guess I will have to bring closure in.

Mr. Philip: As I see it the thrust of what you are saying--and I won't get into a long discussion about the theology behind it, though I always find it is an interesting discussion--is that the order has to come from the bottom rather than the top. That is one of the theological concepts--the catholicity of your argument, if I may use that term.

I found it interesting that both Mr. Hilton and the Solicitor General have talked about the studies in Great Britain and how these studies support their particular position; namely, that the police inquiry should be in the hands of the police at least at the early stages up to month one. Accepting the fact that we are not in a situation that is as torn as Britain is at the moment, I wonder if you would comment on just one sentence from a very excellent article in the Globe and Mail by Norman Hartley called Britain's Summer Riots--A Tale of Two Worlds. In it he concludes with this paragraph:

"The post-riot inquiries, official and unofficial, left little doubt that many police were racially prejudiced. Racism was revealed in many other sections of the community that the police had power. Perhaps most dangerous of all, they were perceived by many inner-city residents as a complete law unto themselves because"--I think this is the important key sentence in this analysis of Great Britain's experience--"because they controlled the complaints procedure against themselves."

I admit the situation is not as tense or as desperate here in Toronto and I am not, in any way, indicating it is a similar situation. But would you like to comment on that one statement from the Globe and that analysis of Great Britain?

Mr. Williams: Who is the authority on that? Who made that statement? Was it some official--

Mr. Philip: Norman Hartley.

Mr. Williams: Who is Norman Hartley? A correspondent?

Mr. Philip: Correspondent from London for the Globe and Mail.

Reverend Horsch: I do not know what the situation in Britain is, apart from what I read in the newspaper and what I see on TV. I will say that if I were a police officer I would much rather be cleared by a board that is not made up of fellow officers than by fellow officers. If I have done something wrong, okay, then I have to take the consequences. If I have not, then I would much rather be cleared by an independent review board than by a police review board. It would carry far more weight as far as the public is concerned--maybe not as far as the police are concerned but as far as the public is concerned.

So therefore I believe what the man is saying is correct--that the complaints should not be handled by the police from the outset. It always gives the impression--it may not be that way--that here something is being done under the table that I cannot control. If it is done by a citizens' review board, we know we can control it.

3:30 p.m.

Mr. Piché: That sounds like a commonsense statement.

Mr. Philip: I believe there is another comment.

Reverend Coles: I would offer this comment that many of have discovered in the last 10 years a kind of a virus towards racism and other mischiefs in ourselves that we did not know was there. It was not uncovered until we had to meet people of other cultures and other styles. Here I think we are not different from Britain. Britain was an admirable society when it was more unitary. There was more of the old neighbourliness in it and so it has been in Canada.

Now we have to learn how to live with those who seem different from ourselves and thus tend to frighten us--tend to come to us as strangers. Therefore, it seems to me the old procedures that were adequate when we were a simpler and a less diversified, less tense society, will not work. We have to help the police appear to be servants of justice and not managers of the community through procedures that protect them very much in the terms that my colleague has just spoken of.

Therefore, I think the British lesson is just a little bit ahead of us. When economic and cultural tensions develop here in Canada as they have in Britain, we will be up against the same riots and distress they are. It seems to me the case is not extraneous, the evidence from Britain. So I would say one of the tasks as a committee of the Legislature is to help Ontario and to help Metro Toronto in Ontario move from the time when we were one tribe to the time when we are many tribes who have to learn to live together justly--and I might even hope--lovingly.

Reverend Bhagan: One more comment, Mr. Chairman. In the Chicago experience, they are using independent investigators, contrary to what has been said. We checked that up to last Tuesday

after the coalition did a brief. We were told by the people in Chicago they are using public investigators. That is one system which is working where the police are not investigating themselves.

Mr. Philip: One last question: I notice on the agenda there is a group called Positive Parents of Ontario due in. Are you familiar with that group? I gather it shares a different theological perspective than you do?

Reverend Bhagan: That is Mr. Stu Norton's group?

Mr. Philip: Yes, that is right--Newton. We have him down on this, unless it is a wrong name.

Reverend Bhagan: I would say yes, Mr. Philip.

Mr. Philip: Would you agree with the recent statement of Senator Barry Goldwater that certain groups in our society who try to set moral standards for others and enforce them through political means are a danger to the democracy in which we live?

Mr. Williams: I thought we were on Bill 68.

Mr. Laughren: The moral majority.

Mr. Chairman: Mr. Philip, you are straining the chair greatly. One question is now--I think I am going to rule--

Mr. Philip: Not nearly as much as if we had got into some of the theological discussions that I would have loved to.

Mr. Chairman: We will go on to the next member, and I am directing you to restrict yourselves to one question to one member of the delegation, each of you, from here on.

Mr. Williams: One question to this gentleman here--I am sorry, I forgot your name, sir.

Reverend Bhagan: Bhagan.

Mr. Williams: I'm sorry. You gave the example earlier of the incident where the police officer, in making an arrest, trying to step in to aid a citizen, made an intemperate and perhaps even a racist remark. No one can condone that under any circumstances, but what I was interested in finding out was the whole of the example. You indicated he was making an arrest but you did not say whether the arrest was being made because the person he was apprehending appeared to be committing a felony or had come from committing a murder or something even more grievous--if there is anything more grievous than committing a murder.

While not condoning what the officer did, I suppose one would have a better appreciation of why he might react in an intemperate fashion if he knew the extent of the pressure the officer might be under in trying to prevent a crime from being committed once he knew the severity of the crime. I am just wondering what he was arresting the person for.

Reverend Bhagan: The reporter asked and no one had seen anything. He asked, "What is wrong? What did this young man do?" and nobody was saying anything. He could not get any information from anyone.

Mr. Williams: So we really don't know what brought the whole incident about.

Reverend Bhagan: In reporting that incident, my point was the bottom line--the complaint he made against the officer was not so much--

Mr. Williams: Not acted upon. As I say, we are not condoning what he did, but that is without knowing the full circumstances of why he reacted the way he did. (Inaudible) understand why he should have acted that way in the first place.

Reverend Bhagan: Exactly.

Mr. Elston: I have a series of questions,, but I will limit it to one question to Mr. Bhagan and ask him to comment on a suggestion that was made a couple of times earlier today. That is, that the perception of fairness by the public might be saved if a coinvestigative process were put in place in a formal manner through this legislation. By that I mean that as well as having the police officer investigating the initial complaint, you would have a representative or an investigator who was appointed by the commissioner to attend as a member of a team for a unit, to investigate the whole proceeding of complaint from the very beginning of the proceeding. Do you see that as a possibility of resolving part of the difficulties? Taking, as I do, the point of your brief that you would prefer a totally independent group, could you see the perception of it being aided by this sort of development?

Reverend Bhagan: There is such a lot of mistrust in the minority community right now. My understanding of the question is, do I favour the police making the investigation plus a public investigator.

Mr. Elston: As a team.

Reverend Bhagan: I still have difficulty with that because my perception of the community is there is such a lack of trust with the police investigating from the beginning that I would see some problems with that.

Reverend Coles: May I add this answer? It would then put the policeman in precisely the same style of accountability as a clergyman. This is exactly what happens to most of the professions now. They are accountable both professionally and to the public law, and why should the policeman be different?

If there is a complaint against me it works both through church channels and through the public channel. I think it has great merit, a great step ahead.

Reverend Bhagan: As I said, it is the first time I heard it.

Mr. Wrye: I am in effect asking this of all four, but I will just need a yes or no. Was there any consultation with any of the four of you by anybody, the Solicitor General or anyone from his office, in the drafting of this legislation?

Reverend Bhagan: No.

Reverend Horsch: No.

Mr. Wrye: Do you know of any group of the so-called visible minority who are in agreement with the legislation?

Reverend Bhagan: No.

Reverend Horsch: No.

3:40 p.m.

Mr. Wrye: I have one suggestion--it has been suggested a number of times by Mr. MacQuarrie and Mr. Kennedy--and it is that I would like to have some kind of list from the Deputy Solicitor General as to who in the visible minority was consulted by the Solicitor General in the preparation of this legislation. It is fair for you to suggest it, but I think we need--

Mr. Philip: Mr. Hilton told us that the Solicitor General attended one meeting one night as a guest speaker, at which there were several hundred visible minorities.

Mr. Wrye: There was some comment a week ago about the National Black Coalition. Maybe there were others, but I would like to know. That is my only question.

Mr. Kennedy: This is supplementary to John Williams' last point, and that was this incident you described, Reverend Bhagan, with the young lady, when the ill-chosen remark was made and the filing of the complaint just didn't take, it didn't happen. Do you feel in your experience--surely, I don't feel--that this would be condoned or part of the upper-echelon police policy to have that sort of thing happen? It wouldn't be condoned by the senior police officials, the chief. They would want that complaint to be processed and handled. Wouldn't you feel that way?

Reverend Bhagan: I raised that question with Staff Superintendent Wright, who is the co-ordinator of race relations for the Metro force. at a meeting of religious leaders which he was at with the officers of Contrast, the black newspaper, and Staff Superintendent Wright said to me, "I am not the complaints bureau." That was his response. I came back and said--

Mr. Kennedy: Who said this?

Reverend Bhagan: Staff Superintendent Eric Wright, who is the co-ordinator of race relations. I came back and said to him, "But you are the co-ordinator for race relations."

Mr. Chairman: Mr. Mitchell, a final comment.

Mr. Mitchell: It is not a question. I just wish to do two things--one, thank the gentlemen for a very calm and very straightforward presentation, and at the same time, apologize to them for getting in a yelling match across the table while they were in their presentation, but I should add that I did so because we here to hear the individual as well as those representing a group. I think, as it has been expressed, the deputy minister misunderstood and felt that someone was speaking for him as a member of a given congregation, and I felt he had that right to make to make his comments felt. So, at the same time as thanking you for a very well prepared brief and a very calmly presented one, I wish to apologize for putting you through that kind of thing.

Mr. Chairman: Thank you, gentlemen. Mr. Mitchell has said it for the chair in thanking you for coming. I am sure, though, you have all witnessed more yelling in your time, and certainly will in the future, than we have experienced here today.

Mr. Hilton: In relation to Mr. Mitchell's comment, may I add one ecclesiastical word: Amen.

Mr. Chairman: Thank you again.

Mr. Raha and Dr. Pandya. These gentlemen are representing the National Association of Canadians of Origins in India, and exhibit 15, their brief, was circulated in the last short while.

Mr. Elston: May we have a comment on Mr. Wrye's request for some list of people from the minority community who were associated in the construction of this bill?

Mr. Hilton: There is no list. It has been going on since Mr. MacBeth's time, when he was here and the bill that was brought forward then was defeated. It has been a continuing situation. Whether they have been the right people we have been talking to, I don't know, but all kinds of people have been talked to.

Mr. Philip: Surely the Solicitor General has a calendar and it would be a simple matter of going through his calendar and seeing which groups he met with.

Mr. Chairman: Mr. MacQuarrie, would you like to field that one? Since Mr. Hilton has indicated that this has been going on since before Mr. McMurtry was Solicitor General, what are the possibilities of the calendars of the former Solicitors General being look into to find how many groups of the visible minority have been consulted on this bill--this bill or predecessors to this bill? Is that possible or practical?

Mr. McQuarrie: Mr. Chairman, I do not have access to the minister's calendars, but I will certainly endeavour to obtain the information, and I am sure Mr. Ritchie and I can check to see the extent of consultation.

Mr. Philip: The other alternative, since the Solicitor General claims there are people out there in the visible minority groups who agree with him, would be for him to produce here a few warm bodies to say they agree with him. So far, not one person who has come forward from any of the visible minority or community groups has expressed any agreement with the Solicitor General's position.

Mr. Laughren: We would love to meet these people.

Mr. Williams: Mr. Chairman, we have a delegation that has been waiting since three o'clock.

Mr. Wrye: May I ask just one brief question? When Mr. McQuarrie was talking about the 80 or 90 per cent of the cases solved, we had asked if we could get a breakdown of that and you indicated there was some problem with that. What is the state of--

Mr. Chairman: Yes, Mr. Hilton stated that they were in the process of trying to get a breakdown of those. It did not appear as if they were categorized according to how they were withdrawn--the 90 per cent that were withdrawn or disposed of, under what circumstances that took place. That did not appear to be broken down or classified--

Mr. Wrye: In other words, just that it happened.

Mr. Chairman: Yes, that is what it appears to be, although he said they were continuing their search to try to answer the question.

Mr. Raha, who is the spokesman, or are both of you?

Mr. Raha: Both; we will take part of the brief each.

Mr. Chairman: Your name is?

Mr. Raha: I am Probhat Raha.

Mr. Chairman: You are leading off then, are you?

Mr. Raha: Yes.

We have a very short brief but I think when the questions are asked we will be able to give you our viewpoint on other matters that are not covered here. Our brief is divided into three parts. We have an introduction, a comment and finally a recommendation and conclusion. I will start at the introduction.

About a year ago, at a press conference, South Asians asked Premier William Davis to set up an all-party legislative inquiry into charges of police harassment of South Asians. Many members of Metro's visible minorities, not just South Asians but blacks as well, believe that they are being unfairly treated by the police. The belief, whether completely true or not, must be dealt with.

The best way to do this is through an independent citizens' complaint bureau. If not just members of visible minorities, but

all citizens, could take their complaints about the police to a body that is independent of the police, justice would be seen to be done as well as being done.

Then we have our comments on Bill 68, which is at present before the Legislature:

To the extent that Bill 68 has provided for a board which may review a complaint after an initial investigation by the police is completed, it represents an improvement over the present system. However, in our opinion, there are still prominent flaws in the present bill which can be summarized as follows:

The bill has omitted a crucial component of fair investigation, namely an independent public investigation from the outset. So long as the front-line investigations are handled in closed hearings by officials who have departmental or police interests to protect, the system will be seriously flawed. Many complainants will simply not confide their complaints about the police to other police officers, especially in closed hearings, and in this sense there is no improvement to what exists at present.

The success of the review mechanism depends largely on the confidence and willingness of an individual to lodge a complaint when there is cause to do so. Any failure to provide for an independent and public investigation from the outset will be perceived, particularly by minority groups, many of whose members have language difficulties, as unworkable. The internal investigation, even if details are provided to the proposed complaints board, cannot adequately address the problem which has occasioned the introduction of the bill--that is, a perception of bias in the investigative procedure.

3:50 p.m.

Dr. Pandya: We feel that the bill provides protection to police officers that is accorded to no other public servants even though the police are public servants. Section 19(10) of the bill indicates that the police officer complained against is not required to automatically testify. No other Ontario professional is protected from being required to testify in regard to complaints or allegations of misconduct.

Section 19(12) requires that the misconduct of the police officer has to be proved beyond a reasonable doubt. This standard of proof is as required in a criminal trial where the individual's liberty is at stake, but even in criminal hearings the hearings are still in public, whereas here they are in private. In any unresolved initial complaint, if the proposed board holds a hearing, which is by no means automatic, any confessions of guilt, or false explanation, or alibis by the police officer are inadmissible except in the unlikely event that the officer in question consents. The hearing is then held de novo. This means the board is not even an appeals board and puts into question the seriousness with which the initial hearings are likely to be carried out, and appears to offer the police officer extreme protection even if the party is guilty of wrongdoing.

In support of closed hearings and an initial review by the police, it has been said that members of the police will not speak freely to outsiders, who also cannot understand the way the police work. It is also frequently said by supporters of the police that the citizen who has nothing to hide has nothing to fear from the police. If that is the case, then the reverse is also true--namely, that the police officer who has nothing to hide then clearly also has nothing to fear from a public hearing by a civilian review body, especially if its members are carefully chosen for impartiality and some have training in law. Furthermore, the recent McDonald commission on the RCMP has demonstrated that outsiders are perfectly capable of understanding police work.

The bill is not evenhanded in its treatment of police and citizens. The bill sets up a system which is predominantly biased against the complainant. The police are given rights and complainants are given discretionary justice, which is generally unreviewable.

We do not feel the bill has been produced after an adequate study of independent civilian complaints committees set up in other countries.

Mr. Raha: Recommendations: In summary we recommend that Bill 68 be amended so that:

1. A complaints review procedure be established which involves civilians as well as police representatives from the beginning;

2. A finding of misconduct against a police officer, for employment purposes need not require the criminal standard of proof but the civil standard, which is summarized by "proof on the balance of probabilities" or "proof on the preponderance of evidence";

3. Legal aid be provided for both the complainant and the police officer. Incidentally--this is not in the brief; I am just adding it here--it is my understanding that the mechanism of legal help to police officer exists at the present through the police association, the police commission and other bodies;

4. The civilian representatives on the modified board reflect the cultural and ethnic composition of Metropolitan Toronto;

5. The board holds open hearings on all cases except in very exceptional circumstances.

Dr. Pandya: We at the National Association of Canadians of Origins in India are convinced that the above recommendations provide the best way for the Ontario government to assure not just minority groups, but all members of the public, that the investigations are complete and impartial, and to strengthen their confidence in the police force and establish a harmonious relationship between Metro's minority groups and the police force.

We feel our recommendations are reasonable and balanced and provide necessary protection for both police and members of the public.

We recognize that most police officers are competent and impartial and that police work is difficult and sometimes dangerous, but the best way to build up confidence on both sides is to have more two-way contact and not for the police to live with a siege mentality in a closed world of their own where they feel the public just doesn't understand them or, worse still, is their enemy.

Mr. Raha: This, Mr. Chairman, is our brief and we are open to any questions you might ask.

Mr. Wrye: Gentlemen, I would like to compliment you at the outset on a very outstanding presentation. It is a very thoughtful presentation and one which the committee will examine very seriously. I found it a very balanced presentation.

I am struck by the fact that recommendation number one is one which has today come up for the first time. It was suggested by our first witness this morning and out of the blue you have suggested it this afternoon. As time goes on it strikes me as an eminently sensible compromise.

As you know, the police have concerns too that they have some representation and that there be a balance in a procedure. Let me just clarify, you are suggesting some kind of team approach, which would have a police representative, presumably from this present complaints bureau, members of the force, and independent investigators who would presumably be hired by the complaints commissioner, Mr. Linden.

Is that how you plan to have this investigation force work?

Mr. Raha: Yes. I think the commissioner will have to select his persons carefully. We are in agreement with the present form of the bill which said that one third of the people should be legally trained. We think that is a very good suggestion, but there should be an equal mix of police people and civilians.

Mr. Wryue: To do the investigation.

Mr. Raha: To start the investigation right from the beginning so that it is workable and there is no misunderstanding or mistrust.

Mr. Wrye: Since you have proposed this--and the last group we suggested it to liked the idea but it was a bit of a surprise to them, but you have thought it out a little bit further. Let me ask you this: If we were to have this joint police independent investigation team, who would you see them be answerable to, the chief, the public complaints commissioner or the two of them in tandem?

I just want to get your thoughts on that. How would that be handled?

Dr. Pandya: I think that is not really important, because the main concern of most people is that there should be individuals who are not members of the police force involved in the investigation from the beginning. If that happens, then it really doesn't matter who they report to, because the investigation will have been seen to be carried out with people who will hopefully be impartial and they will then merely report their findings. So I don't think that is a very important issue.

Mr. Wrye: Given that we have heard from group after group representing the so-called visible minorities as to how they find the present Bill 68 serious flawed, so flawed that it may be worse than what is at present in place, do you think that this major change in the bill--there is one other major change you suggested and I will leave that for one of my lawyer friends to discuss a little more--would satisfy the visible minorities? Could they work and work well with a pilot project which had this kind of a balanced investigative team?

Mr. Raha: Excepting that initial 30-day period, which is the closed-hearing period, we think that should be removed because the onus is that this joint investigative team should work, should be responsible right from the beginning and it should be an open investigation, unless there is an exceptional case.

Mr. Wrye: But then the group you represent would find that to be an acceptable compromise?

Mr. Raha: Yes, excepting the first 30-day closed hearing period.

4 p.m.

Dr. Pandya: Yes. I think one would have to be very careful about the appointment of the civilian representatives. They would have to be seen to be impartial and representative of Metro Toronto as a whole.

If that is seen to happen, I think that people would have some confidence in any investigation they carried out.

Mr. Wrye: These civilian representatives would be investigators, though. They even might--as you suggested in your brief, on the make-up of the McDonald commission, the commission appointed independent investigators. We heard evidence, I believe from the Deputy Solicitor General, that one of the investigators was in fact a member of the Ontario Provincial Police on loan.

It seems to me what we might end up with is people who are appointed by Mr. Linden who have police backgrounds but who are not members of the Metropolitan Toronto Police. Is that your understanding of what you might end up with?

Dr. Pandya: I really don't think that would be very good if that is what might happen. I think people who have worked with

the police certainly know how the police work, but I think there tends to be a kind of buddy-buddy situation where just the fact that you have worked with that group before could perhaps make you a little more sympathetic than you should be, or you may overlook things which you shouldn't overlook.

If one has legal training, that is good enough. I don't see that you have to have worked with the police at any particular time.

Mr. Wrye: I am suggesting that they be competent investigative people.

I know we are running a little late, Mr. Chairman, so I will leave the questioning to others.

Mr. Laughren: I was somewhat surprised and I would like you to comment on your statement that the present bill represents an improvement over the present system. The opinion of most groups, I believe, although I haven't kept count, has been that they would rather have the present system than a bill which gives the impression of an independent investigation without it being so.

You make your statement quite clear that it represents an improvement over the present system. I wonder how you came to that conclusion.

Mr. Raha: One thing: Right now we don't have any independent commissioner. The bill provides for an independent commissioner. That is a start. That is the way we look at it.

From there, with more amendments and more proportional representation on the committee, we can see the bill developing into something workable. What is in place now is definitely not acceptable to the minority groups. They don't trust the system.

Mr. Laughren: What is bothering many of us is that this gives much more of an appearance of independence than is really there because of who will do the investigation--whether or not that is a very real danger to have that kind of appearance without the reality being there.

Mr. Raha: Yes, we agree to that. That is why we are not accepting the bill as it is without the recommendations we have made for amendments.

Mr. Laughren: Being as blunt as I can, if we are faced with a situation in which the people who have the power to make amendments appear to be pretty tough and inflexible, if there are no amendments made to the bill to effect what you have got in here, would you prefer it as it is now or the present system?

Dr. Pandya: I think we would probably prefer the present system, because hearings like this serve no purpose if our input isn't noted.

Mr. Philip: How many people would your association represent? Do you have any idea?

Mr. Raha: All over Canada we have about 1,000 direct members, plus many other affiliate groups.

Mr. Philip: By members you mean member organizations?

Mr. Raha: Also independent members. We have both types of member.

Mr. Philip: And in Ontario, in terms of the total membership in all the various affiliated groups connected with you.

Mr. Raha: We have directly 150 members, plus four affiliate groups, but on this issue, we are only group who particularly work on this political lobbying kind of thing. We have the backing of most of the major Christian (inaudible) groups and Pakistani groups.

Mr. Philip: Were you contacted directly by the ministry or by the Solicitor General for your views prior to his introducing this bill in the Legislature or any of the predecessor bills?

Mr. Raha: No.

Mr. Philip: You were not. Therefore, once again we have found another group that wasn't contacted by the Solicitor General, even though he claims there are hundreds of people out there that he contacted.

Mr. Laughren: We are going to keep looking until we find a group he contacted.

Mr. Philip: Do you know if any of your member groups were contacted by the Solicitor General?

Dr. Pandya: No, I don't think so.

Mr. Philip: Do you know of any member of your association who was at any time contacted by the Solicitor General or his staff?

Dr. Pandya: No.

Mr. Philip: In general I guess my party and I are in support of the general thrust of your comments, but I do have one question concerning page four, item five.

Comments have been made by a number of groups appearing before us, groups representing the visible minority groups, that the very threat that the complainant can have certain things done to him as a result of his complaining is the real threat and a deterrent to the laying of a complaint. They worry about charges being laid for unsubstantiated accusations.

Would suggestion number five on page four not lead to more of those kinds of actions being taken by a police officer who might feel grieved, since under your suggestion his actions would not only be inquired into by the investigator but also in a sense by the press who might be attending these investigative hearings?

Dr. Pandya: I think that could happen, but I think one should not take recommendation five in isolation from the other recommendations that there are civilian members from the outset. If that is followed, then I think the threat is reduced.

In any case I think right now there are very few cases where people complain for frivolous reasons. In fact, I would say the majority of people don't complain, even though they have valid complaints, and even when they complain generally speaking their complaints do not get the outcome which they should get.

So I think the likelihood of frivolous complaints is very small in any case. The whole process of lodging a complaint is a serious one and I don't think one would complain unless one really feels there is some reason for that.

Mr. Philip: You would accept though that the complaint procedure is not a court of law.

Dr. Pandya: Yes.

Mr. Philip: Therefore, it might well be that someone might be found innocent or guilty in the way that would require a reprimand, but not necessarily be guilty of any criminal or civil offence.

Dr. Pandya: That is okay.

Mr. Philip: Accepting that then, would you not agree that if the other recommendations you are after are implemented, that perhaps number five, in fairness to the person being accused, could be one of the recommendations that could be eliminated?

Dr. Pandya: Yes, I think it could. The main thing is that there should be impartial civil representatives in the hearing from the outset. If one looks at one's own profession, one would not like to have hearings in public if there is a disciplinary type of a case but the police are an exception to that kind of a rule in the sense that they are in contact with the public all the time and have to use force sometimes; and sometimes they use force when they should not use force. So I think the police are an exceptional case where public hearings are more desirable than less desirable. If it is a question of choosing between having civilian representatives from the outset and holding public hearings, there is no question that one wants citizen representatives from the outset.

4:10 p.m.

Mr. Philip: Would you agree to something along the lines of the Ombudsman's system? He has a reporting system on what his investigation showed, without using the name of the public

employee who might have taken a certain action that he disagrees with, or the name of the complainant.

Mr. Raha: Under the existing complaints procedure the police can charge the complainant with public mischief when they do not believe the complaint, but there is nothing in the proposed act which would prevent this practice from continuing. We think there should be some kind of defence mechanism built into the bill in the form of legal aid, or an ombudsman for the complainant. So, the Ombudsman investigation is one thing to which we are open.

Dr. Pandya: I would like to make another comment here about frivolous charges. I think right now the system is loaded in favour of the police so that you are not going to make a complaint unless you have a case, and even then, frequently it is not accepted. I think if you change it so that there are civilian members, you are going to have a much fairer outcome. When there are valid complaints they will be recognized as valid complaints. I would say that if a person makes a frivolous complaint, they deserve what they get.

Mr. Kennedy: What do they get?

Dr. Pandya: Meaning that if there is a charge of public mischief laid against them.

Mr. Chairman: Thank you. Those are the speakers that wished to ask questions.

Mr. Wrye: I have one question. Are we getting a list of the numbers of charges of public mischief laid last year?

Mr. Hilton: We believe it is eight or nine, but I am not certain. We also believe that there may a couple of instances where there is more than one charge, so that would mean there were not eight or nine people, but I do not know. Quite frankly, I was hoping to ask Chief Ackroyd, too, because he will be giving evidence. It is within his force, so he should have knowledge of that fact.

Mr. Williams: I just have one question I would like to ask the gentlemen, and if you have already been asked the question, I apologize. I was out of the room for about ten minutes.

I would be interested to know with regard to your particular association, which represents the South Asian community at large, whether this type of situation has ever developed with any minorities going into your home countries. Have any of these minorities experienced problems with the law enforcement agencies in your countries that has led them to the point of having to request from government the setting up of some type of commission such as we are processing here today? Has this ever occurred in your native countries with regard to minority groups who have come to your countries, as far as you know?

Mr. Raha: I do not think we have any such commission working there.

Mr. Williams: I know I am speaking about the other half of the world, almost, when I talk about South Asia, so I can't pinpoint any particular countries, but I presume you would certainly have a broad awareness of what might be happening in those countries as far as discrimination against minority groups is concerned; whether this is a problem that has been experienced in your native countries and what has been done about it.

Mr. Raha: If you are talking about my native country, our constitution gives a lot of safeguards to minorities as such. I think as far as the police are concerned, they are never rough on a religious or minority background ever. It is strictly law and order enforcement. That is my experience.

Mr. Williams: I'm sorry, which country is that?

Mr. Raha: India.

Dr. Pandya: I think you have to take each case as it comes. In the case of India, there aren't too many minorities which are visibly different from the majority. Certainly India has other kinds of problems, historical and religious problems, and from that point of view, the Indian constitution has a lot of safeguards.

For instance, with respect to castes, there are safeguards in the constitution. With respect to entrance into the civil service, there are quotas for scheduled castes and other groups to make sure that they are represented. I don't think you could say there is any problem in the sense of a group which is visibly different from any other group. Problems tend to be more of a religious or linguistic nature.

Mr. Williams: Could it be that in those countries, the minority groups have not grown to a size such as to be of any significant impact on the economic or social climate and that therefore there really is not a problem?

Mr. Raha: The only socioeconomic turmoil was due to the immigration of people as a result of the partition of India, but they were all taken in in very good spirit. There was tension, people had to sacrifice and jobs went to the refugees in preference to the native born. But I think we took it very well. There was no additional tension created. There were minor frictions regarding accommodation and things of that nature, but that was very minor considering the scale of immigration we had at the time of partition.

Mr. Chairman: Thank you very much, gentlemen, for appearing before us today.

Members, subject to your request, it appears fairly likely at this point that with the additional people who wish to be heard, and with a rescheduling by the clerk, we may be able to finish with all the witnesses by having hearings all day Monday and Tuesday, which will relieve Friday. We will start clause by clause Wednesday morning. The clerk has yet to contact one person

to put that into place, and we should know by very early tomorrow morning.

Mr. Philip: Are you saying that on Friday, October 2, we will not have hearings?

Mr. Chairman: That would appear to be so. We should know for sure tomorrow morning.

Mr. Philip: Paul Godfrey appears on Monday, is that correct?

Mr. Chairman: Monday morning, yes. There is a reshuffling around Monday and Tuesday.

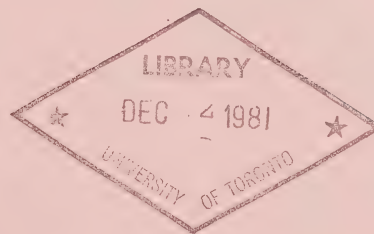
Mr. Philip: What about Chief Ackroyd?

Mr. Chairman: He would be here Tuesday afternoon. You can thank the clerk, not the chairman, for this. We will adjourn until tomorrow morning at 10 o'clock sharp, please, gentlemen.

The committee adjourned at 4:19 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
WEDNESDAY, SEPTEMBER 30, 1981
Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
Andrewes, P. W. (Lincoln PC)
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Gordon, J. K. (Sudbury PC)
Laughren, F. (Nickel Belt NDP)
MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Philip, E. T. (Etobicoke NDP)
Piché, R. L. (Cochrane North PC)
Wrye, W. M. (Windsor-Sandwich L)

Substitution:

Kennedy, R. D. (Mississauga South PC) for Mr. Andrewes

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister

McMurtry, Hon. R. R., Solicitor General

Ritchie, J. M., Director, Office of Legal Services

Witnesses:

Rogers, E. A., Private Citizen

Thomas, R. G., President, Criminal Lawyers' Association of Ontario

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, September 30, 1981

The committee met at 10:11 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Toronto Police Force.

Mr. Chairman: Gentlemen, we have a quorum in place. Perhaps we could continue with today's witness.

Mr. Thomas, president of the Criminal Lawyers Association of Ontario is with us. Would you carry on with your submission please?

Mr. Thomas: Is there any particular place I should sit?

Mr. Chairman: No, just anywhere there, that is fine.

Mr. Philip: Mr. Chairman, should this witness be considered as representing a visible minority group?

Hon. Mr. McMurtry: Lawyers are a highly visible minority, but at the rate that they are being called to the bar they may soon be a majority in the province.

Mr. Thomas: Twelve hundred a year they say.

Thank you, Mr. Chairman. May I say we welcome the opportunity to appear before your committee and to make some brief submissions and observations with respect to the provisions of Bill 68.

First of all, may I say that I come to the committee as spokesman for approximately 600 men and women who are practising criminal law throughout Ontario. We do not represent any particular minority group but we do represent many of the persons who come into contact with the police and, in particular, dealing with this proposed legislation, members of the Metropolitan Toronto police.

Of the points that we would like to make, some of which no doubt have already been made to your committee. It is perhaps unfortunate that there may be some repetition for which I apologize in advance.

However, the main point we have to make is that we feel the complaints commissioner should have original jurisdiction. The position of our association has been from the outset that the

public complaints commissioner should be involved in the process from the outset.

It is our submission that the bill, as presently drafted, effectively eliminates any significant investigation by the public complaints commissioner until the expiration of 30 days from the time when the complaint is made. There is, of course, a provision in the draft in section 14 that permits the public complaints commissioner to inquire into and investigate the allegations, more particularly in paragraph 3(c), if he feels that "there are reasonable grounds to believe that the inquiry and investigation is essential in the public interest having regard to undue delay in the conduct of an investigation under section 9 or other exceptional circumstances."

In subsection 4 it is indicated that "a decision to take action under clause 3(c) shall be deemed to be made in the exercise of the statutory power within the meaning of the Judicial Review Procedure Act." Now, it seems to us that subsection effectively eliminates the power of the public complaints commissioner to intervene prior to the 30-day period because the exercise of that judgement is subject to review under the act as quoted and enables a motion to be brought to question the judgement of the public complaints commissioner to intervene and to prevent the public complaints commissioner from conducting the inquiry until the application is heard, which has the practical result of nullifying his power to intervene prior to the 30 day period.

The public complaints commissioner, in our view, as I have indicated, should have original jurisdiction and also the public complaints board should be given more power, with two exceptions, those being when the matter is referred by the chief of police, or when the police officer who is a party to the proceedings appeals. The board really only comes into action in the matter when the commissioner directs that there should be a hearing. In our respectful submission, the board should have more power and should not be subject to the complete discretion of the public complaints commissioner who may direct that a hearing be held.

Under section 15 of the act as drafted, the provision under subsection 2 is that the commissioner, upon request for a review, if he feels it is in the public interest, may direct a hearing by the board. While we realize that it is not possible to delineate and spell out every situation which might be in the public interest and certain discretion has to be left with the public complaints commissioner, there does not seem to be any effective review of that decision which is made by the public complaints commissioner. He has two courses. He can order a hearing or take no action. And that section does not contemplate any middle course, in our respectful submission.

The interesting corollary of that is if the public complaints commissioner decides to review the matter, he then must, of course, give notice and, because of provisions in the act, he may very well be on a collision course with the chief of police. It seems to me the the spirit of this legislation is to provide an effective and smooth manner of dealing with complaints

against the police, and to prevent a feeling of any apprehension of bias in the mind of the public and at the same time to be fair to the police and to adopt a procedure which does not place the police force in the position of being subject to criticism if they have not conducted a fair investigation.

You will notice under section 14 that if the public complaints commissioner decides to investigate the matter under previous subsections of section 14, he notifies the chief of police in writing and then after his inquiry he must forward the results to the chief of police who then must consider his investigation, that report and the results of that investigation in determining what action he should take under section 10.

10:20 a.m.

The result is that the public complaints commissioner may very well decide to intervene, or to investigate, or to conduct an inquiry; he then is in the position of second-guessing, in some ways, the chief of police. He then conducts his investigation and sends it back to the chief of police with a direction that that be considered when preparing the final investigation report, and determining what action, if any, he will be taking under section 10(1).

So, in essence, our position is that the act as drafted means and will result in an unsatisfactory condition existing, that is, that the public complaints commissioner will not be in the position originally; he will be some sort of an overseer with no real, effective powers to intervene until the expiration of 30 days. If he does intervene at the expiration of 30 days, then his investigation goes back to the chief of police who still has the ultimate decision to make, and the board only comes into action in the matter, except in two circumstances, when the public complaints commissioner decides, in his absolute discretion, whether there should be a hearing.

In my respectful submission, the legislation as drafted is not satisfactory when one keeps in mind that the whole purpose should be to satisfy the public that the legislation is fair to both sides. There is no doubt that there will be frivolous complaints. The public complaints commissioner was involved in the matter initially with power; I do not mean just being notified as he is now under this legislation. If he has power and some authority to do something, he can deal with such complaints in a manner which will no doubt be recognized. He can deal with frivolous complaints in a manner that he can determine, and I suggest that there should be some review of the commissioner's powers to the board.

The public complaints commissioner sort of sits, with respect, in a position of limbo where he knows, to some extent, what is going on but he really does not have any effective power until the expiration of 30 days, and that 30 days could be a very important period. Then, in his absolute discretion, he determines whether a hearing should be held, and there is really no effective review of that decision.

There have been bodies before you that have said that the police should not be investigating themselves and some, no doubt, have alleged that this cannot work. Speaking on behalf of our association, we feel that the police ought not to be investigating themselves, from several points of view, but one point that may not have been stressed is from their own point of view.

At a time when their own public relations is very important, if the public complaints commissioner is involved from the outset, and has some carriage with full notice to all the parties, then the public complaints commissioner has the effective responsibility, and how he decides what course of action a matter requires, would be up to him. It would prevent unfair allegations being made against the police that the police are conducting a whitewash.

In my respectful submission the legislation as drafted will, in many instances, put the public complaints commissioner in a potential conflict with the chief of police, and I do not think you will be doing the chief of police or the public complaints commissioner, or the public, any favour with the legislation as it is drafted.

We are all for the introduction of legislation to effectively and smoothly handle complaints against the police, and we are prepared to watch and observe the progress of any legislation that is passed. I realize that there is no legislation now but, before this act is passed, I would respectfully submit that you ought not to pass legislation that has the effect of continuing the practice that is in vogue in Metropolitan Toronto at the present time by some halfway measure.

I think somebody has to be given this power when you realize the provisions of the act that call for fair representation on the board, with the Metropolitan police association and commission having power to appoint or recommend and also the municipality of Metropolitan Toronto. This board, or the police commissioner, is not, as some people have suggested, some sort of citizens' vigilante group. It is going to be a responsible body with authority to deal with matters from the point of view of the police and from the point of view of the public.

The legislation as drafted will not really bring that about both in appearance and in practice because, in some cases, the commissioner will be too far removed from the picture. He will be in the position of not having original control, but actually intervening in certain cases when it is in the public interest and calling a hearing of the board when it is in the public interest. You really are not giving the commissioner sufficient powers. The steps that are taken are not sufficient to satisfy the public and to satisfy, I suggest, the police that it is really an independent review.

Those are the essential points we have to make. If I may summarize, from the point of view of the defence bar, there should be a right of review to the board on the refusal of the complaints commissioner to take action. It is my respectful submission that his decision should be reviewed by the board and, at the present

time, the board really only comes into focus, as I have said, in too limited circumstances.

With respect to other problems, such as procedure, I do not think there is any point in dwelling on that. It is to be noted that the Statutory Powers Procedure Act, which governs other statutes, permits tribunals to call a party to the proceedings. Lawyers and accountants who are subject to discipline and governed by the Statutory Powers Procedure Act can be subpoenaed by the tribunal hearing the complaint against them.

I am not suggesting that is a good power. It seems to be repugnant in our system that anyone should be placed in the position of having to incriminate himself or in any way being compelled to testify. It may be a good provision under this act, but certainly other professions don't enjoy that privilege. The standard of proof is the standard of proof in criminal matters. Misconduct must be proved beyond a reasonable doubt. In other bodies, the civil standard, preponderance of evidence, satisfaction of guilt is sufficient.

The provision for reasonable doubt may be interpreted as a satisfactory provision. I only point out that other acts of the Legislature do not contain such a provision.

In my respectful submission--and I know that I have repeated myself but I do wish to say this in conclusion--I would like to thank the committee for hearing our submissions, and I would like to thank Mr. Forsyth for his courtesy in arranging for our attendance. I do encourage the committee to put forth legislation that has been sadly lacking in this field for many years.

I would say I do think you ought to have the public complaints commissioner involved initially with original jurisdiction, so that from the point of view of the public, and from the point of view of the police themselves, he does have original jurisdiction. How far that goes, how far he or she determines the action necessary at that time, is another matter. But you shouldn't have a provision, in my respectful submission, where he is out of the picture for 30 days. If he does decide to act within the 30-day period, then his decision can be immediately appealed and effectively nullified.

10:30 a.m.

Mr. Chairman: Thank you, Mr. Thomas. The Solicitor General might want to respond first.

Hon. Mr. McMurtry: I gather, Mr. Thomas, as far as the original jurisdiction is concerned, although I think you are aware of the fact that the act provides the right of the civilian complaints commissioner to monitor the handling of the complaints from day one, that you would prefer a system whereby his own investigative staff could take over on day one?

Mr. Thomas: Could take over if he decided that was warranted. I think he should have that power so that members of the public would know he is not out of the picture.

Hon. Mr. McMurtry: I would, of course, quarrel with your use of the words "out of the picture," because the police have the responsibility to provide him with copies of the reports from day one so he can monitor the handling of the complaint.

It is our intention, and we think the legislation provides this, that in a particularly sensitive case where there is particular public interest, the complaints commissioner may suggest, for example, to the chief of police that his monitoring of the investigation from day one might, in special cases, involve even a member of his investigative staff accompanying police investigators. Obviously, that will depend upon the co-operation of the police department.

It is our view that, if this request is made in certain cases by the complaints commissioner, it would be a difficult request for the police department to turn down, given the--I hope--high profile of the complaints commissioner. I just want you to know we did envisage that happening in certain cases which would--although it would depend upon the co-operation of the police department. We think you are not going to have any effective investigation without that co-operation.

I think you, as a very experienced criminal defence counsel, would appreciate that, if the police department makes a conscious decision not to co-operate with outside investigators, they can make it very difficult, regardless of how experienced the outside investigators are. I think we all recognize that fact. Is that not so?

Mr. Thomas: Oh yes, I agree with that. I know there would be certain cases in which I fully expect the complaints commissioner would make certain suggestions. But it troubles me that the act has a provision that, in my respectful submission, ought to be eliminated, because it almost has a built-in suggestion that the public complaints commissioner could be acting irresponsibly.

Hon. Mr. McMurtry: The point I am trying to make is, from the experience you and I have enjoyed in the defence bar, that the system is going to depend to a very large extent, regardless of what the legislation states, on the co-operation of the police, at least as far as the senior levels of the force are concerned.

Mr. Thomas: That is right.

Hon. Mr. McMurtry: I gather from what you have said, Mr. Thomas, that you don't envisage, for example, when a complaint is made, that every complaint made be investigated by a separate group of investigators?

Mr. Thomas: No, I don't see that at all. I think your public complaints commissioner--without dealing with Mr. Linden, for whom we have the highest regard--it is assumed that he will be a responsible person and will make judgements. You have to leave certain authority up to that person and he has to determine if it is something that is worth--

Hon. Mr. McMurtry: Worth getting his investigators in.

Mr. Thomas: That's right.

Hon. Mr. McMurtry: It has been suggested to this committee that every complaint from day one be investigated by a separate group of investigators under the complaints commissioner's office. I gather that is not the position of your association.

Mr. Thomas: It would be unreasonable to do that but, at the same time, the opposite of that is, if he doesn't do it, then the bureau of the Metropolitan police will have to cause some investigation.

It is far easier, I would suggest, for the commissioner to examine a matter and then say, "This matter doesn't require any further action or it requires this" and cut a point off. But the bureau, because of its sensitive nature--it is a branch of the Metropolitan police--may have to conduct a more extensive investigation than the commissioner himself would.

At these times of pressing budgets, the Metropolitan Toronto police budget is always being stretched and we hear stories occasionally about certain areas having to suffer--drug investigation and others--because of the lack of funds, which I don't think the public would tolerate. I can't see heaping on this bureau the necessity of investigating what might be frivolous complaints.

Your commissioner should have that power. He should be able to examine a matter and say, "This doesn't require any further investigation or it requires minimum investigation." His decision could be reviewed by a board under certain circumstances.

Hon. Mr. McMurtry: I appreciate that, but I gather what you are saying is that, as far as the average complaint is concerned, in normal circumstances the police would do the initial investigation.

Mr. Thomas: Yes, but under his direction. In other words, if the complaint is brought to the--I know the act says now that the complaint can be brought to the bureau, to the police station or to the commissioner.

Hon. Mr. McMurtry: What I am asking--perhaps I am not making myself very clear--Mr. Jones, as a citizen, brings his complaint to the office of the civilian complaints commissioner. Then we will assume it appears to be relatively routine--I don't know if we should use that term "routine," but it is a complaint--we are not talking about a criminal investigation.

I think there is a lot of confusion about that. A criminal investigation would have to be carried out by a police force, but a complaint is brought to the complaints commissioner's office. Do you envisage at that point that for each complaint brought the civilian commissioner's office the commissioner would institute his own investigation through his own staff?

Mr. Thomas: I don't think that would be necessary in some of the cases.

Hon. Mr. McMurtry: How would that decision be made?

Mr. Thomas: The commissioner would review it and determine whether his own staff should investigate it, because of the sensitive nature of it, because of the complexities involved, because of putting the Metropolitan Toronto police in the position of investigating themselves. Certainly the Metropolitan Toronto police would be informed and it may be a complaint of such a minor nature that the police could look into it with a view to resolving it with the citizen themselves.

Where it is apparent to the commissioner that it is not a situation that could be resolved swiftly, then perhaps he should have his own people involved in the matter with full notice to both parties. Because sometimes it is very difficult and places an impossible burden on the members of the Metropolitan police, who have been on the job some 25 and 30 years with their colleagues, to go out and investigate each other.

Hon. Mr. McMurtry: I am not sure I understand the response, but I gather you are suggesting it would be up to the civilian complaints commissioner to make the decision on day one whether the investigation should be carried out by the police department or his own investigators.

10:40 a.m.

Mr. Thomas: That is right. He has the ultimate decision which could then be reviewed by the board.

Hon. Mr. McMurtry: So you are not suggesting that on every complaint the investigation automatically be carried out by a separate group of investigators.

Mr. Thomas: No, you would have to have a staff of hundreds of investigators, if that is the case.

Hon. Mr. McMurtry: We believe the monitoring that is provided will provide basically the goals that you see achieved, but we may have a slight disagreement as to how we best think these goals can be achieved. For example Mr. Arthur Maloney, who is one of the most distinguished members of our profession and one of the most distinguished members of the defence bar, had this to say in his report about this very issue, and I am quoting from page 11:

"Many of the briefs that were presented to us as well as many of the submissions that were made to us and the opinion of many of the persons who have written on the subject disagree with the suggestion that the investigative branch should be manned by police personnel and strongly urge that the investigations should be conducted by staff unconnected with the police department. I gave very serious thought to this point of view and decided against making such a recommendation."

There seems to be a haunting familiarity between many of the submissions that were made to Mr. Maloney and what this committee has heard.

"I thought also about recommending that the staff of investigators be made up of half police personnel and half nonpolice personnel and they would work as a team. I decided against this recommendation also because I felt that this was a partnership that would be doomed to failure because it involved a mistrust of the members of the police force who would be selected for this particular service. I do not feel that this is a mistrust which at the present time is justified or deserved in Toronto.

"Accordingly, I have come to the conclusion that the investigative branch should be manned exclusively by trained police personnel. They are eminently qualified to undertake this sort of responsibility. They are more likely to have ready access to police files and police information than would be made available to nonpolice personnel. I am confident too of their ability to be fair and objective."

That was his conclusion. There appears in your submission to be some disagreement with Mr. Maloney's conclusions after his very careful and intensive perusal of this problem.

Mr. Kennedy: Can I just break in and ask what report is that?

Hon. Mr. McMurtry: This is the Arthur Maloney's report made at the request of the Metropolitan Toronto council in 1975.

Mr. Thomas: I am familiar with that report. It has been some time since I have read it but his views at that time were well received I believe and certainly we all have great respect for Mr. Maloney. I do not disagree with his comments except that it is six years later and times have changed somewhat.

This Legislature is deciding whether there should be a public complaints commissioner. I respectfully suggest, as I have indicated, that you give him original jurisdiction; let him decide how it should be.

You say it is being monitored. That is not unlike looking in at the ball game through the knothole. You are not in the ball park but you can see what is going on. That in my respectful submission is a fair analogy. He can monitor, he can observe, but if he decides to step in he can be wiped out of the picture very quickly.

Hon. Mr. McMurtry: I disagree with your analogy because I think it would depend to a very large extent on the relationship between the chief of police and the citizens' complaints commissioner.

Mr. Thomas: I agree with that.

Hon. Mr. McMurtry: I think the success of any system is going to be related very directly, regardless of what the

legislation states, to that sort of relationship. If there is a lack of co-operation it is not going to work.

Mr. Thomas: That is another point I tried to make. We want a spirit of co-operation between the police commission and the chief of police and that is what it should be. But when you have a situation where the complaints commissioner orders or directs further investigation and the results of his investigation are sent back to the chief of police and then the chief takes a certain action, the commissioner then has the power to sort of-- He is on a collision course with the chief of police because he still has the power to direct a hearing before the board if he disagrees with the action.

Hon. Mr. McMurtry: Yes, but he should have that right.

Mr. Thomas: He should have that right, but if he has the original jurisdiction he can have a more effective role in guiding the investigation so the chief of police is not always on the hot seat. The chief of police cannot win in this situation.

Hon. Mr. McMurtry: But the chief of police has said to us and will be saying to this committee I expect--I don't want to anticipate his remarks--that whether he is on the hot seat or not--and he probably would not disagree with you, given the climate today--that he wants that responsibility in the first instance in order to maintain what he considers to be a high level of discipline.

I do not think you are opposed to that. I think what you are saying is that would be what would normally happen but in some cases you want to see the original jurisdiction.

Mr. Thomas: Yes. In other words, I think the commissioner should have the original jurisdiction. Whether he exercises it or not is up to him and his decision could be reviewed by the board under certain circumstances--not in every case. He is going to give reasons.

Yes, it might make more work for the board. I just do not like to see a situation where the board, except in two circumstances, only surfaces when the commissioner presses the button. Otherwise, it is sort of in limbo somewhere.

If that commissioner has that original jurisdiction and that power I would think the public would then know that is the man they can look to. Right now he is just sort of down the road somewhere overseeing, looking at the matter with--I suggest and no doubt this is where we disagree--limited powers.

Hon. Mr. McMurtry: I see his authority as going somewhat beyond your perception of it. I see him having a considerable degree of original jurisdiction. But be that as it may, I gather a system you would envisage would probably lead to a great majority of complaints being investigated by the police and a much fewer number being investigated by the complaints commissioner staff.

Mr. Thomas: That may be the net result of it because the

commissioner would build up a body of experience and precedent whereby he would make his judgement. But if his judgement were reviewable and if he had that original--

Hon. Mr. McMurtry: I think you have made that point.

Mr. Thomas: I know I have made it. That to me is an answer that will satisfy the public and takes the chief of police out of the focus. Obviously, he wants to maintain the discipline and the rapport and authority. But in these matters where he can say I have been directed by the public complaints commissioner to conduct an investigation or that in this case the commissioner will be conducting an investigation and we will be conducting our own and assisting, you will have a spirit of co-operation build up.

This legislation keeps the commissioner down the road and at some point they are going to be on a collision course. I do not think you are going to accomplish that spirit of fairness to the public and fairness to the police that you want.

Hon. Mr. McMurtry: Of course, what we are interested in is something that we think has a chance of working--

Mr. Thomas: That is right.

Hon. Mr. McMurtry: I repeat once more, I do not see him as being down the road. I just want to make it clear that certainly the philosophy and some of the principles underlying this legislation relate very much to the office of the commissioner and the quality of the person who occupies that office. We have come to the conclusion that, regardless of what the legislation states, unless you have a person of very high quality in that office it is probably not going to work very well.

I gather that at least we agree on one thing--that when we debate this bill those who will be attempting to administer the bill will know that at least we have a public complaints commissioner of very high quality.

10:50 a.m.

Mr. Philip: I agree with that. Mr. Linden is--

Hon. Mr. McMurtry: I am asking Mr. Thomas's opinion.

Mr. Thomas: He has served as an arbitrator for many years, is a recognised defence counsel and a decent person. I think he will be an excellent choice for that position.

Hon. Mr. McMurtry: Thank you, Mr. Thomas.

Mr. Chairman and colleagues, unfortunately I have to catch an airplane for an Attorney Generals' conference in Newfoundland. I am sorry to leave before you are completed, but I would like to thank Mr. Thomas for being with us and giving us the benefit of his views. I apologize for leaving before you leave, Mr. Thomas.

Mr. Elston: Could I just ask one quick question, Mr.

Solicitor General, before you do go?

The suggestion from what you have just said is that we have a bill here which will only work with co-operation. Can you indicate to the committee if someone has told you they would be unwilling to co-operate in an investigative procedure if amendments were made to this bill?

Hon. Mr. McMurtry: I do not understand that question.

Mr. Elston: You are saying this bill is what you see as being a workable one. Any legislation, to work, must have co-operation. Are you saying that if there are amendments to this bill there is some element that will not co-operate to make this new legislation workable?

Hon. Mr. McMurtry: Of course it would depend entirely on the amendments. As I said in my opening statement, the framework of this legislation has been structured with a view to creating a context within which co-operation would be encouraged rather than confrontation.

It is our view and the views of the McDonald commission, the Maloney commission, the Carter report, the UK Parliament, that the police have the responsibility to do the initial investigation. So there is no question but that our framework is structured to maintain a high level of co-operation, given the fact that 90 per cent of these complaints against the police are resolved informally today to everybody's satisfaction.

We are concerned about any amendments which in our view, and in the view of these many commissions, would institutionalize confrontation. We will again be quite prepared to deal with any amendments we think will strengthen the bill. We may or may not have some fundamental disagreement, but until we see the amendments, we do not know.

Everybody has said, and quite properly so, that if legislation does not appear to be fair to the public, that creates a problem, no question about it. I think everybody recognizes that it must also appear fair to the police community, and I do not think we have any disagreement about that either.

What we are concerned about is amendments that we believe will help to maintain at least the possibility of a high level of co-operation. We may not have much disagreement in the final analysis, but I am sure we will not know that until we get to clause-by-clause discussion.

Mr. Elston: The suggestion was made yesterday, and you alluded to it again, of overtures being made now to consider having a co-investigative team, someone sent in at this point with the consent of the police where the commissioner's own investigator would accompany the police officers on an investigation. Are you prepared to consider an amendment to this legislation to put that in the bill as a procedure?

Hon. Mr. McMurtry: We are prepared to consider any

amendments. Right now I do not think it is necessary, because I believe there will be a very few cases in which it would be necessary. But I believe that it has much greater success in working if the chief of police is in a position to either agree or disagree with that. I think it puts him, as Mr. Thomas says, on the spot. I do not think the police should be forced to have somebody looking over their shoulder from day one.

I believe that we will have a much better chance of success if the police simply are invited to agree to that in the appropriate case. I prefer the legislation in its present state because I believe, knowing a little bit about how police departments function, that allowing the police to agree to that will lead to much more co-operation, rather than saying to the police, "You are going to have this investigator looking over your shoulder whether you like it or not." I strongly believe that inviting the police to agree with that approach will produce much better results.

Mr. Elston: At one point you had mentioned to one of our delegations here, earlier last week, that you perceive the police complaints commissioner as being in a position of following right along with the investigation. What is the difference between having the PCC steadily there, day after day of the investigation, and having one of his investigators there? I don't see where the difference lies.

Hon. Mr. McMurtry: I invite you to read these many very exhaustive studies that have been made on the subject, because they will point out to you the confrontation that invariably occurs when the police are forced to accept either an investigation from day one from an outside group, or to have some independent group sort of looking over their shoulder from day one. I do not believe it will work.

I believe there will be cases in which the police, recognizing the political sensitivity of the issue from a public interest standpoint, will be quite prepared and, indeed, would welcome that. But I really think, given the responsibility and the trust, that it is important to emphasize the fact that any legislation that is not built on a fundamental trust of our policing will not work.

I am sorry I have to leave, Mr. Chairman, to catch this aircraft. I will be quite prepared to pursue this question and any other question as long as you like when we get to clause by clause.

Mr. Elston: I just hope that you are not suggesting that the police are not willing to co-operate.

Mr. Chairman: Mr. Minister, Mr. Laughren did wish a quick question.

Mr. Laughren: I was a little concerned about the minister using words like "we have determined" and "we have concluded that." I am a little confused, too, because then you said that you would entertain amendments.

I really would like that assurance that you will entertain amendments, because members of your party on the committee, some of whom have taken a real interest in the bill and understand the issues very well, I am sure are going to be doing some serious thinking about any amendments that are brought forth. I think it would be incumbent upon you to give us the assurance that they will be seriously entertained.

Hon. Mr. McMurtry: They will be seriously entertained, of course they will be. I am just telling you that we have made certain judgements, as is our responsibility, with respect to the framing of this legislation. Some of the amendments which have been suggested, I do not mind admitting some degree of skepticism about the value of those amendments. But that is not to suggest that each and every suggestion will not be carefully considered as we go through clause by clause.

Mr. Breithaupt: Mr. Chairman, there were two things that we have asked the Solicitor General to provide, as I recall--just to remind the committee. That is, a list of any of the organizations or groups which may support the point of view that he has brought forward, so that we can come to some balance with respect to all of the other coalition groups that are not of the same view; and secondly, the documentation of this 90 per cent figure of resolution of complaints. I wanted to remind the chair that these two items would be most useful to the committee, in the hope that they can in due course be provided to us before we are at the clause by clause stage.

11 a.m.

Mr. Chairman: Yes, I would direct the first of those of those to the clerk, whether that is available, and the second to the Deputy Solicitor General. It was reported yesterday that it wasn't yet available, the 90 per cent breakdown.

Mr. Hilton: I would suggest that through Chief Ackroyd. Those figures involve the experience of the Metropolitan Toronto police.

Mr. Breithaupt: So we can get some information.

Mr. Hilton: I hope you will be able to get that.

Mr. Philip: Will we be provided the list of the contacts the Solicitor General has made in the "visible minority" community?

Mr. Hilton: I suggest that in line with my discussion with the minister this morning, you might ask him that yourself when he appears here on Monday.

Mr. Philip: We have been asking the same question for a week and a half, and we have been getting very evasive answers. The minister comes in and makes statements and then quickly disappears before he can be questioned on them. Surely you, as deputy minister, can get that information for us. It has been a week and a half that we have been asking for it.

Mr. Mitchell: Supplementary to the comment raised by Mr. Philip, I do not object to his asking for those names. However, I think in any request of that nature, it is incumbent upon the minister to talk to those groups to find out if they would be willing to have their names put forward and whether they would appear.

We are not trying to create a situation of confrontation. They may have made their comments to him but may not--

Mr. Laughren: Come on, don't be silly.

Mr. Mitchell: No, I am quite serious.

Mr. Wrye: Surely you cannot be serious, Mr. Mitchell, in suggesting that these groups are now going to say, "Oh no, we have talked to the minister and we agree with the police investigation, but we won't say that in public." That's a red herring if I have ever heard one.

Mr. Mitchell: If you are dealing with a group, Mr. Wrye, you ask their permission to use their names.

Mr. Wrye: May I ask a new question before we get down to questioning the witness on the 90 per cent? I want to ask a little more about that.

Mr. Chairman: May that not be after the witness?

Mr. Wrye: Okay, that is fine.

Mr. MacQuarrie: Mr. Chairman, with respect to the questions raised in discussions with the minister this morning, he will be appearing before the committee on subsequent occasions and has indicated that he will be happy to deal with the matters.

Mr. Chairman: May I point out--I think it is appropriate at this time--that it is definite that we will not sit Friday. The schedule has been rearranged for Monday and Tuesday, and we have an additional witness this morning who has asked to come forward. I don't believe Mr. Thomas will be here for the entire morning. If we try to shorten up a little to give this last gentleman--who has just recently come forward, it is true--a chance, say, at 12 o'clock? Could we try to be through with Mr. Thomas by 12 o'clock? That will permit this schedule to carry on.

Mr. Breithaupt: May I just ask, Mr. Chairman, if the plan for next week is that we will sit Monday, Tuesday, Wednesday and Thursday? Is that the plan?

Mr. Chairman: Monday and Tuesday with witnesses, and Wednesday and thereafter with clause by clause. I say "thereafter" because it would depend upon the length of time--

Mr. Mitchell: At what time on Monday would you be planning on starting?

Mr. Chairman: At 10 o'clock. We will be hearing

witnesses, morning and afternoon, on both Monday and Tuesday.

Mr. Breithaupt: But we are not sitting this Friday.

Mr. Chairman: Not Friday. As of yesterday, it was a little tentative. It is now definite.

Mr. Philip: Mr. Chairman, I do not have the standing order before me, but if we have not concluded by Friday of next week, is the order that came from the House broad enough to allow us to sit the following Monday, or must we wait until the House reconvenes?

Mr. Chairman: The following Monday is Thanksgiving and the House goes back on Tuesday. I suggest we do not have the capacity to meet on that Tuesday, but we would come back Wednesday with our standard time, which the House authorized.

Mr. Breithaupt: We would probably have to use up our standard time and then seek additional time.

Mr. Chairman: If necessary, correct. But I don't think we have the authorization to meet, beyond Friday, until the Wednesday following resumption of the House.

Mr. Mitchell: I just wanted to follow up on one aspect of the presentation. You are a lawyer.

Mr. Thomas: That is correct.

Mr. Mitchell: Who is the one who oversees any problems with the legal profession?

Mr. Thomas: The Law Society of Upper Canada.

Mr. Mitchell: As a lawyer, would you like to see a lay group overseeing what is being done by the law society?

Mr. Thomas: There are civilian benchers. I think the Law Society of Upper Canada does a good job in governing the legal profession.

Mr. Mitchell: At the same time, however, you are--at least, it seems so to me, although I may have interpreted you wrongly--that you were implying that the police department themselves do not do a good job on their internal investigations. How do you differentiate between the law profession and the police department?

Mr. Thomas: I never said the Metropolitan Toronto police don't do a good job in their investigations. I have had some experience with it; so have a lot of our members.

They have a complaints bureau that deals with matters now, but it is viewed by members of the public and certainly some members of the legal profession, as a body that does not have any real rules to follow, or anybody governing it, other than the chief of police. But lawyers do not have the powers of arrest, or

the powers to detain, the vast powers the police have to charge people under the Criminal Code and to affect their liberties.

The thrust of my submissions to you have been that the complaints commissioner should have some real power, not a position where he is "hands off" until a period of time.

Mr. Mitchell: I accept that premise. I just want to be sure you were not suggesting that the internal discipline committee, or whatever, within the police department should be done away with and it be handled solely by--

Mr. Thomas: I don't think that could ever be done. Let's envisage a situation where a person is complaining about the conduct of the police in dealing with parked cars on the street. Surely no reasonable person could expect the public complaints commissioner to bring in his staff to deal with that sort of problem. Surely the police department could be invited, with their internal affairs, to deal with that matter and to make a report back to the commissioner. That's a responsible position.

Otherwise you are going to have to have 400 or 500 investigators working under this commissioner and that's just not practical. And it is not only not practical just for him; budgetary considerations are another factor. The commissioner should have the power and a good quality person in that position will have that authority to say, "This is a matter that can be handled by the police," or "This is a matter that we should deal with."

Mr. Mitchell: So, in a nutshell, you don't see any reason why the internal discipline committee should not continue, but at the same time it would be your position, basically, that the public complaints commissioner should be brought in at day one; that there shouldn't be that waiting period of 30 days or until the interim report is filed.

Mr. Thomas: That's correct.

Mr. Kennedy: Just a supplementary to that, Mr. Chairman. What would your impression be of the number of frivolous, vexatious complaints that really do not have any great basis compared to the number I would describe as valid?

Mr. Thomas: I don't know that because I don't know whether the complaints bureau of the Metropolitan police make a report on that or not. I think the only person you could ask is Chief Ackroyd and his senior staff. There are some very senior officers in that department, many of whom have had homicide experience for years and are very qualified people.

I wouldn't know. Certainly common sense tells you that there would be a number of complaints that would be frivolous, but I wouldn't know the percentage because those statistics don't seem to be available. I think that is what your committee would like to have, but I don't have access to that information.

Mr. Kennedy: My experience with them hasn't been in the

area of racial complaints, but traffic violations, and then the next day in the cold light of day the complainant cools off and really it doesn't amount to anything. But certainly at the time I get called they are pretty hot about this and if they knew a telephone number of the complaints commission the lights on the switchboard would light up.

It seems to me there would be a number of these, a big number ratio. This is something which certainly has to be considered in going into this whole investigative power.

11:10 a.m.

Mr. Thomas: As you know this draft act effectively removed the Ombudsman from this area. I think with any legislation that effectively eliminates the Ombudsman from any role to play, you ought to consider giving the complaints commissioner more original power because in effect the citizen really has no one to turn to.

Mr. Kennedy: Just a moment. You say it removes. The Ombudsman, as I understand it, deals with only areas in provincial jurisdiction. This would be in Metropolitan Toronto and I wouldn't think the Ombudsman would be very active in any of it.

Mr. Thomas: Section 23 says the Ombudsman Act does not apply to the public complaints commissioner or the board.

Mr. Laughren: I was going to ask, Mr. Thomas, if your association had ever encountered the problem of complainants--because you do deal with criminal investigations--with problems between clients and police and who would have been apprehensive about going through any kind of complaints procedure with the police?

Mr. Thomas: In any association there are people who perceive situations from different perspectives. We have members who could be described as ultra-conservative, we have members who might be described otherwise, so it is difficult for me to speak representing the whole body in each view.

Certainly I have heard of cases where, because of the nature of the complaint, because of the nature of the party involved and perhaps of the lawyer himself or herself, they don't trust the police so they don't turn the matter over in that way, figuring the built-in notion that there will be a whitewash. Whether they can support that or not is another matter but that is certainly a notion. I don't know how you are going to eliminate that.

There are certain segments of society that won't trust the police no matter what you people do. Maybe that is going too far but certainly there will always be those types of people.

That is why I say if you really give the complaints commissioner the original jurisdiction, sure he has a heavy weight on his shoulder maybe, but that is what he is there for. Let him have that power to decide. If the police should look into this one, he is accountable for that. If he says, "My people have to

look after this, either in conjunction with the police or with total information going to the police on the other side or alone my investigator should deal with it," then he should have that power and be accountable for it. Then the appearance of a one-sided approach to the matter is done away with.

Mr. Laughren: Was your association, the Criminal Lawyers' of Canada--

Mr. Thomas: Ontario.

Mr. Laughren: Ontario, sorry. Was your association approached at all when this bill was being drafted to get your views on this kind of complaints procedure, do you know?

Mr. Thomas: We were approached informally. We certainly were not approached directly. Mr. Linden practised at the defence bar and was a member of our association. He did quite considerable criminal work as well as practising in the labour law field, I believe. We were consulted informally.

Mr. Laughren: Roughly when would that have been?

Mr. Thomas: That was about a year or a year and a half ago, I believe; about a year ago.

We really did not have any input into this. That may be partly our own fault. Volunteer organizations sometimes depend on the strength of a few individuals to do the work. There are lots of people who make noises but not too many do the work. I am being as frank as I can.

We should have made representations before. That is all I would really like to say about that. We were never blocked, and I am sure that our views would have been considered. Our position really though has been, at that time and now, consistent.

Mr. Wrye: Mr. Chairman, I have a number of questions. I found great interest in your comment, Mr. Thomas, and your use of the word "unreasonable" when it was suggested there be an independent investigation. I would just like you to elaborate on that.

Why, in your opinion, would it be unreasonable to set up an independent investigatory process rather than to, in effect, move the complaints bureau over and have it done, as you suggested, with the PCC really running the show?

Mr. Thomas: I think the Metropolitan Toronto police, Mr. Wrye, will always have a complaints bureau because, whether the police complaints commissioner is totally in charge or not, they still have to have a branch to investigate and conduct their own investigations so they can make their reports to determine what action should be taken. I do not see how that can be eliminated.

I am only saying that there will be cases which will not call for an independent investigation in the sense that the material comes forward and the substance of the very complaint

will not cause the commissioner to launch into an in-depth investigation. That is a judgement call that he is going to have to make and he should be accountable for it.

Maybe in the vast majority of cases there will have to be some investigation, the depth of which would be up to his office. There will have to be a period of time develop whereby he may need more staff as time goes on. You will not run into that problem with this legislation, I do not think, because he really will not be actively involved. It is fine to say he will be monitoring it, but he will not be actively involved.

Mr. Wrye: So at the very minimum you are suggesting changes which would take away the powers given the chief. As I understand it, the bureau is now under the chief. You are proposing it be under the complaints commissioner.

Mr. Thomas: That is right.

Mr. Wrye: And you are also proposing that, in effect, we do not need section 14(3).

Mr. Thomas: That is correct.

Mr. Wrye: We could just wipe out sections 14(3) and (4).

Mr. Thomas: That is right.

Mr. Wrye: Just let me pursue this independent investigation with you a little bit. The Solicitor General in his comments with and questions of you, read extensively from Arthur Maloney's report back in May 1975 and I noted that you made mention of the fact that that was some six and a half years ago. Maloney speaks of there not being any need for either a co-investigation setup or an independent investigation "at the present time," when he wrote the report.

In your view, has the climate changed--and we have heard from witnesses, frankly, who suggest it has--sufficiently enough to make Maloney's views a little out of date?

Mr. Thomas: I think, for one reason or another, the climate has changed. Certainly the minority groups are more visible and certainly more members of the public are actively involved in considerations of minority groups, to whatever extent it may be.

I do think that if you have the complaints commissioner with original jurisdiction, the chief would not have all the powers that he has under this legislation. There is something repugnant about the commissioner asking for a further investigation and then sending his report back to the chief of police, asking for the chief then to, as it were, reconsider his position.

11:20 a.m.

It may be done, as the Solicitor General has said, to bring about co-operation between the two, but it seems to me that it

will bring about a collision course. I think if you have a responsible commissioner in office right from the outset and in charge of the matter, he is going to make those decisions. He is going to have to live by them; he is going to be accountable to minority groups; he is going to be accountable to the public; he is going to be accountable to the Legislature, and, in my respectful submission, that will guarantee, or certainly go a long way to guaranteeing, all interests being protected, including the police.

Mr. Wrye: Would you agree, then--again, the Solicitor General suggested that he thought he had a bill that would have the trust of the police department. It appears that trust is kind of a two-sided thing, and that at the present time what we have is not likely to be trusted by the community at large, and what you are suggesting in your changes is a system where the community can look at the project that is put in place and say, "We trust that project to be fair."

Mr. Thomas: They can look at it and say it has the potential, given responsibility throughout--and we all assume that--of being fair to all sides.

Right now, this section 14(4) is a provision that, to me, should be swiftly, if I may say that, eliminated. To think that your public complaints commissioner can find--look at the standard--"other exceptional circumstances." Look at that section: he decides to intervene, and right away, he is blocked.

Mr. Wrye: The chief says "no."

Mr. Thomas: The chief says "no." So there is a motion brought before a Supreme Court judge and, pending the matter being heard, his investigation is stopped. The 30-day period will go by for sure, in most cases. So that you have a built-in provision, a built-in roadblock, an ace in the hole; and that just is not right or sensible.

Mr. Wrye: I seem to be hearing your view that, not only do you think the chief is in the hot seat, but that it will lead inevitably to some kind of confrontation which could ultimately destroy the project.

Mr. Thomas: That is right. Keeping in mind that we do want this to work for both sides and to be responsible about it, that is exactly what I feel will happen. Because what could be worse than your commissioner, in exceptional circumstances, intervening? And there is the power there; and the chief of police says, "I don't want him in it right now." With this power built right in, the chief of police would be under a lot of pressure, or may just feel that he should act and bring that motion, and regardless of what the judge may or may not do, they will buy the 30-day period in any event; and that could be very crucial in a very sensitive case.

Then you realize that in section 15, your public complaints commissioner receives a request for a review, and then he has the absolute discretion to determine whether there will be a hearing

or not. And there does not seem to be any power of review of that provision that I am aware of. Maybe you are more familiar with the bill than I am, but he says: "There is no middle ground. It is either black or white. You either have a hearing, or there is no action."

Mr. Wrye: That is right.

Mr. Thomas: There is no middle ground.

Mr. Wrye: Let me just ask you one more question, if I may. I am not a lawyer, and I would be very interested in getting you to expand on your opinion, offered in your opening statement, on the level of guilt required; that we have a criminal level of beyond reasonable doubt offered; and you seemed to be suggesting that another level of preponderance of the evidence, or balance of probabilities, should be the level; and perhaps you can expand on that a little bit, and help me.

Mr. Thomas: It is a difficult concept, because judges, in charging juries in criminal matters--there is no magic formula. The preponderance of evidence seems to mean that if you are satisfied--in other words, if you have the scales of justice and if they are tipped ever so slightly, that would be the preponderance of evidence. Reasonable doubt is proof beyond a moral certainty--not absolute certainty but beyond a moral certainty.

In most of the cases I am familiar with, under other pieces of legislation governed by the Statutory Powers Procedure Act, the test is really, is the tribunal reasonably satisfied? But proof beyond a reasonable doubt is proof in a criminal case.

You may say: "There is the power. The board has the power to terminate the officer's employment, to discharge him from the force." But proof beyond a reasonable doubt is limited to criminal cases where the liberty of the subject is at stake, where the person is being charged with a criminal offence under the Criminal Code, to which, of course, the reasonable doubt would apply, in the situation where the chief of police refers the matter to the crown attorney and recommends that there should be a charge laid. Then the charge would be proof beyond a reasonable doubt. So the officer here has proof beyond a reasonable doubt under the Criminal Code, and reasonable doubt under the Statutory Powers Procedure Act.

It may be that other statutes should provide for reasonable doubt. It may be that this is an enlightened provision. I really have not thought that through to the full extent, but I am only pointing out to you that in a vast amount of legislation under the Statutory Powers Procedures Act, the test is not the test in criminal law, of reasonable doubt; it is preponderance of evidence, on the balance of probabilities.

Mr. MacQuarrie: Mr. Thomas, we have heard representations made that delegations in fact would prefer no bill to the draft bill that is before us. Bearing in mind that this is a pilot project and that there might be some weaknesses in it, as

you have suggested, I was wondering whether you and your organization feel that this bill does represent an improvement over the status quo.

Mr. Thomas: It certainly represents an improvement over the status quo. I do not think there is any doubt of that, because right now the procedure is really uncertain. It is uncertain if you look into the matter, in that you do not really have any remedies; there are not any rights of appeal. The complaints bureau looks into the matter and decides that it is going to take action or it is not, and that really ends the matter. There really is not any power to compel, or to have it follow any particular guidelines. So to that extent, this is an improvement.

But in many ways it continues the present practice, because it leaves all of the authority in the chief of police and the complaints commissioner. I know I have said this often and I apologize for that, but the complaints commissioner is sort of let in the door but not far enough.

I would not go so far as to say, "If we can't have this bill amended, we don't want any bill at all," because I think any step in the right direction is a welcome step. But, as Mr. Wrye has pointed out, I have not come in here to attack this section by section. We have tried to make a responsible submission to you.

I say this respectfully, do not put in legislation that is going to bring about a collision course between the two. Let us start off with teamwork. With a responsible independent complaints commissioner there to determine what course of action is warranted, if he then determines that, the chief of police can carry on and he can really oversee it.

Mr. McMurtry says "monitor." I am not so sure that is an appropriate word. Maybe it is; he can monitor it without any real power to do much about it. The inevitable result is, if he wants further investigation, he gets it done; then he gives it back to the chief of police again, and he is right away second-guessing the chief in indicating that a limited investigation has been done, not a satisfactory one, and he wants more, and he thrusts it back in his lap again.

11:30 a.m.

It is sort of like the teacher rejecting your essay two or three times. You have got the ultimate job of doing it, but the teacher has the power to fail you. I do not believe that the public complaints commissioner is given enough power here.

Mr. MacQuarrie: But the bill is certainly an improvement over the status quo.

Mr. Thomas: It certainly is. I do not mean that disrespectfully to the Metropolitan Toronto police. They have really been given very few guidelines on what to do here. They set up their own complaints bureau, it has been in existence for years and it has certainly been my personal experience that it has been staffed with some very high-calibre officers, there is no question

about that, but they really have not had the guidelines. That is what is needed here. I think this legislation as drafted really continues that, with an overseer without enough power.

Mr. Philip: I hope I am not repeating some of the questions that have been asked, but I was called to an emergency phone call. What, in your mind, is the difference between an investigation right from the start by an independent investigator, properly trained in police investigation methods, and an investigation by such a person at a later stage when justification for that is demonstrated?

Mr. Thomas: An investigation at a later stage suffers from the obvious difficulty of being at a later stage when witnesses may not be available, when some very important evidence may have disappeared or something may have happened to make it unavailable.

An obvious advantage of having the police complaints commissioner effectively in control from the beginning is that he and his staff have those decisions to make: Should this be conducted independently immediately? Should we use our own trained investigators, who presumably would be former policemen or men trained in that nature?

There are not very many good private investigators around these days. There are not really sufficient courses, but there may have to be, to train them. In any event, most of the investigators would be people who have had past police experience. There will be cases where the police complaints commissioner will say this can be properly handled by the internal affairs of the police department, but that is a decision that he is going to make, not the chief of police.

Mr. Philip: With respect, it strikes me from your description of what you would like to see happen that you are setting up just one extra layer of bureaucracy. The commissioner reviews the complaint and then decides whether it will be investigated internally or by the independent investigator who is on his staff. I ask you what is the advantage, in terms of the clients you often represent, between that kind of system as compared to having the original investigator reporting directly to the independent investigation branch?

Mr. Thomas: I do not see the creation of another level of bureaucracy. I may be missing the point, but I do not see another level of bureaucracy being created.

You have the commissioner there in his office. You have the police department; they are not going to change. The commissioner says, "This is a case that we have to investigate, either alone, in conjunction with the police, or it should be handled internally by the police at this stage," but that decision is made at the outset.

Here you have a situation where the complaints commissioner can really invite further investigation. That is about what it is now, he can invite it. Then he has to send the results of that

back to the chief of police and the chief of police then has to determine what he does under section 10.

Mr. Philip: If we could graph the different models that are being proposed, the community groups are saying, "If I had a complaint with the police I would go to the public complaints commissioner's office and a staff person from his office would immediately look at the complaint." What you are suggesting is, "I would go to the same office and a decision would then be made as to whether the investigation was done by the staff of that office or the staff of the police department." Is that correct?

Mr. Thomas: That is what it boils down to, but the decision being made as to the course of conduct to be followed thereafter is being made by the commissioner's office. Certainly someone in his office will have carriage of the matter, but whether he feels by examining it they should unleash several of their investigators or one of their own independent investigators to do it, or whether the commissioner will simply ask for a report from the complaints bureau, "Look into this and give us your report"--

Mr. Philip: Do you not see that you are creating an extra stage by the method you are advocating as compared to the method the community groups are advocating?

Mr. Thomas: It may be an extra stage. I hadn't envisaged it as that. I am indicating that I think that is a responsible position to take in that there will be some complaints where the commissioner will not feel that his staff is necessary. He is going to make that decision, whether it will be necessary and actually go out and investigate it or to carry the ball. He will carry the ball in the sense the file will be opened, the complaint will be there, but his course of action will be either to keep it within their office or to seek the assistance of the police to look into the matter, depending on the nature of the complaint.

Sure, I could say to you that all complaints must be investigated by an independent body. Maybe that is the ideal, and there may be members of our association who would strongly feel that every complaint should be investigated by the commissioner's office, but I don't think that is a practical reality, keeping in mind the nature of the complaints they get.

You gentlemen know about that, I am sure. I remember when I worked in the Attorney General's department an awful lot of matters that came in for the Attorney General's consideration were frivolous and only required to be looked into in a very brief manner. There may be such complaints. That is up to the commissioner. Let him make that judgement.

Mr. Philip: I fail to see where there is any time or money saved by an independent investigator deciding that it is a frivolous matter and therefore only 30 minutes of his time or 15 minutes of his time or an hour of his time should be spent on it, or someone in that same office deciding, "This may be a frivolous matter and therefore should be referred to a police staff person

to investigate and come to the same conclusion we have come to," namely, that it is a frivolous matter.

It surely strikes me that what you are proposing is more time-consuming. The time spent by the investigator, whoever he is employed by, is going to be equal, but you have created an extra layer of decision-making which will mean more paper processing and more cost to the taxpayers. To the person who thinks his complaint is not frivolous or is important, it will surely appear that he has not had as fair an investigation as if it were done originally by an independent investigator.

Mr. Thomas: I would envisage that in most situations the complaints commissioner would deal with the matter within his own office, depending on the practice that has built up there. One of the difficulties I would suggest with seeking the ultimate is the practical consideration of just how far you can go in creating a large office. Maybe the public complaints commissioner should have a vast number of investigators, I don't know. Maybe in time he will. I am only saying that I don't see any extra work being done; I just don't like to see a situation where, if a citizen is unsatisfied with the complaints commissioner's judgement that it is frivolous, then make him accountable to the board.

Under this legislation except in two circumstances the board is only activated when the commissioner presses the button, so to speak. If the board can review that decision, then the complaints commissioner is responsible.

11:40 a.m.

If you leave it the way it is and the chief of police decides it is frivolous, then you are continuing the confrontation between the citizen and the chief of police. Make the commissioner shoulder that responsibility. Make him carry the ball. Then you don't have the deterioration in the public relations between that citizen or citizens and the chief of police.

Mr. Philip: In an attempt to come down somewhere in the middle I think you have come up with what appears to me to be something that is going to be a lot more expensive than anything either the community or the Solicitor General has advocated. Nonetheless, I will leave that point.

The Solicitor General has implied and suggested on a few occasions that with an independent police investigation system the police would be less co-operative. As a criminal lawyer, hopefully you are getting co-operation from the police on a daily basis and some of the things you are asking are not necessarily pleasant to the police, either because they are time consuming or because some may feel threatened by some of the thing you are interested in. When we had the police officers' association before us there was every indication from them that they would co-operate with any system, whatever Parliament decided.

Is it your feeling that a completely independent system would in any way be subverted by the police? I find that is an attack on the police force which I don't share.

Mr. Thomas: I don't think it would be. Right now the system is internal and, as I have said before, there really are no guidelines and it operates as it has for many years. I don't feel that would be the case. I think be a period of adjustment would have to take place. Everybody would have to adjust to it. There would be certain practices built up and channels of communication opened.

When you keep in mind that this bill has provisions that are not found in very many other statutes, that statements made by members of the police force to someone investigating are not admissible at the hearing, that certainly is a departure from other pieces of legislation. I would think if that provision continues in the act it would certainly go a long way to prevent any feeling of apprehension on the part of the police to co-operate.

They know they have to co-operate and that they are rules and practices and, like anything else, it will depend on the type of person you have as the investigator and the spirit of co-operation that builds up. If the police get the notion the public complaints commissioner and his staff are out to hang them at every course, then naturally there is going to be a stone wall of silence build up.

At the same time there is something a little repugnant--I have heard this often said over the years, when a particular member of the Metro force is assigned to the complaints bureau he then sort of becomes the watchdog. You may have been with him as a partner for eight years on the fraud squad and suddenly he is in the complaints bureau; you are in the fraud squad or the intelligence squad and he has now become sort of your watchdog, and he is of equal rank perhaps. There is a certain feeling within the department of potential distrust because, here you are colleagues together and you are investigating each other.

An independent body would not suffer from that. That is his permanent job, his responsibility is to be independent, to be responsible to the commissioner and to consider both sides. I think the police would probably co-operate even more with an independent investigator. He has built-in protection here. He can say certain things to that investigator that can't be used against him.

I think that provision will go a long way to enhance and to promote fairness and complete co-operation between the police and the independent investigator. I would like to see independent investigators set up, I think that's true, but without the complaints commission. The part I have tried to zero in on, as I have said, is give him original jurisdiction; then the independent investigator means something.

Right now the independent investigator is sort of in limbo. He is brought into action but he really doesn't have the authority because his boss doesn't have the authority. I am afraid that this legislation will do exactly the opposite of what the Solicitor General is trying to achieve, which is that spirit of co-operation. You know that if someone has limited power and

limited authority and can only go so far, is it human nature that you are going to co-operate with that person? If you know that person does have some real authority in the matter that you are going to have to co-operate and that it's in your best interest to co-operate, then you will. But if you are dealing with someone who doesn't really have much authority, human nature would indicate that you would not really take him so seriously.

Mr. Williams: Mr. Thomas, as I understand your comments, you are suggesting, contrary to Mr. Philip's perception that you are adding another layer of bureaucracy, in fact, trying to do away with a layer of bureaucracy by eliminating the public complaints investigation bureau and going straight to the public complaints board establishment. Is that not in essence what you are trying to say here?

Mr. Thomas: The board should have some real authority. The public complaints commissioner's office of course has to exist. He has to have the staff and he has to have investigators, but in my respectful submission he should be the one to determine the course that the investigation should take. He should be accountable to the board. He should not be the person to activate the board. His decision should be accountable to the board.

Mr. Williams: Then in effect you are saying eliminate the bureau under section 5 and have a board. You have your public complaints commissioner who is the chairman of the board and all complaints would originate with the board.

Mr. Thomas: Yes, Mr. Williams, that's it in essence. In other words, the complaints bureau of the Metropolitan Toronto police department may very well exist in another form, but would not have the carriage of the matter throughout because the commissioner would have the original jurisdiction and he would have his own.

You will never eliminate the complaints bureau of the Metropolitan Toronto police. Under this system the complaints bureau of the Metropolitan Toronto police will become a very large body. You are right, that's the net result of it.

Mr. Williams: Other than for referral purposes.

Mr. Thomas: Yes, referral purposes, internal matters or conducting their own internal investigation under their own direction as it goes along. If the public complaints commissioner decides this matter should be investigated by his staff, that does not mean that the Metropolitan Toronto police complaints bureau will not look into it on the interests of their own officer. Of course they will, but they won't have the carriage of it unless it's referred.

Mr. Williams: The concept of original jurisdiction would be taken away from the public complaints investigation bureau as such.

Mr. Thomas: Yes.

Mr. Williams: In that restructuring as you present it to us, what is your view as to the composition, an appointment of the public complaints board as set out in section 4, the three-way arrangement with the legal profession involved, with appointees of the Metropolitan Toronto Board of Commissioners of Police, the Metropolitan Toronto Police Association and then of course the appointments by council of Metro Toronto.

11:50 a.m.

Mr. Thomas: I suppose there will always be disagreements as to how the board should be constituted, but it seems that has the appearance of being fair. The police themselves will have a representative, Metropolitan Toronto council would be able to appoint a person from the community to be a member.

It's not very definite as to how many members the board will consist of. It seems to me the legislation should say how many people there should be. It's sort of in the air right now. As I read it, it can be any number of members.

Mr. Williams: A couple of suggestions have been made by other individuals or groups who have appeared before the committee and perhaps it's more mechanical and doesn't go to the substance of the concerns you have, but in the structuring of the board some people have suggested that one-third element appointed by the Metro Toronto council should in fact be elected at large. I think most members of the committee have felt this would be rather cumbersome and not too practical although it is something worthy of consideration I suppose.

Another organization suggested with regard to the one third of the members of the board it should be persons who have had training in law, that they shouldn't be appointed until the other two thirds had approved of them.

A third suggestion or concern that has been put forward is that having one third of them appointed by the board of commissioners of police or the Metro Toronto Police Association would establish an immediate bias in favour of the police by having one third of the board members coming from that direction so to speak.

Could we have your thoughts on those different points of view?

Mr. Thomas: It might very well create that bias, but I suppose it depends on who makes up the other two thirds. I think you have to assume that the Metropolitan Toronto council would appoint responsible people and certainly the police should be represented. It may be that one third is too high, but I think the police are entitled to have representation on the board, the same as they do in labour arbitrations, that they have confidence in.

The only difficulty I foresee with that is that you have then placed a great deal of weight on the chairperson, because if you have police representatives, they will be envisaged as that on the one side. There will be a great deal of pressure for Metro

council to appoint someone who has no bias or the opposite view towards the police. Then the board will have confrontation built in. It seems to me that the board should consist of X number of people, whether it's six, eight or 10, and there is no question that the police should be able to recommend certain people and Metro council should be able to recommend.

I don't know where you draw the line to satisfy everybody, but this particular system of establishing the board seems to build in that notion that applies in labour negotiation where there is a union man, a management man and then somebody who is supposedly neutral. Then the board will have a characteristic of always having three on side, three on the other and the man in the hot seat.

Mr. Williams: In that scenario, I presume you are characterizing the appointees who have the training in law as being the neutral people. Yet the person who was before the committee the other day suggested that the appointments of the trainees in law would first have to be approved by those appointed from the other two directions. The reason given for that was because the lawyers are biased themselves in favour of the police. May I have your comments on that?

Mr. Thomas: It depends on the lawyer you select. Some lawyers would not be, some would be just the opposite, and some might be. As to the composition of the board, by the very fact you have provisions in there that a certain part of it must be this or must be that, you will bring about the request that they should have approval as to who the others will be, because that is the way it is in labour laws, as I understand it.

It just promotes the notion that this member of the board is for the police and the other person coming from Metropolitan Toronto is not. It seems to me, if you go that way, you are going to have to have pretty specific provisions dealing with the guidelines for qualifications for appointment by Metro.

It seems to me it is a very difficult area, because if the board is given more power, or even the power that it is given here, it has a lot to say to the future of the particular police officer, or whatever reprimand or discipline will be handed out. I have not really directed my mind to the composition of the board. There should be consideration given not only to the police having a voice in the matter, but also to the metropolitan council. Whether the two groups then should approve of the others is carrying it a little bit too far, I think.

Mr. Williams: Let's go back to your original suggestion that the public complaints investigation bureau not have the original jurisdiction in the matter, that it be given directly to the board. Under those circumstances, if the type of structure were set up as you envisage it, do you feel it would be appropriate, nevertheless, to have the chief of police still directly involved, in the nature of being a member of the police complaints board?

Mr. Thomas: I think he should be involved in it. I do

not think he should be eliminated.

Mr. Williams: Do you think it would be appropriate for him to be a member of the board, or do you feel that that would be perceived as adding an element of bias?

Mr. Thomas: It might be perceived as that. It might not be satisfactory--it probably would not be--to have him as a member of the board when he is conducting investigations. First of all, it is his men or women who are the subject matter of this legislation.

Mr. Williams: It is my understanding, with your approach, that that right of initial investigation would be taken away from him.

Mr. Thomas: I do not think he should be a member of the board in the sense that-- Surely persons who are on the board should still have that quality of independence. If you carry on with the system of having a person approved by the police association--which may or may not be wise--I do not think the chief of police should be on the board.

Mr. Williams: So, he would not play a role there; and if the originating jurisdiction was vested with the police complaints board, then the act of involvement of the chief in the early stages would no longer be affected.

Mr. Thomas: Right now he has complete carriage under this legislation, as I see it. I would suggest that by adopting the procedure that we recommend, he would still be actively involved but would not have the final say.

He would be making reports to the commissioner and, depending on the nature of his reports, the commissioner would take a certain course of conduct thereafter and make a decision what to do. Right now, everything is in the hands of the chief of police, right up to the ultimate stage; and then you go back to section 10, and he still has a decision to make. I think that is just vesting too much power in the chief of police and will not be perceived as satisfactory by the public. Without in any way questioning the integrity of the present chief of police or any successors there may be, it is just too one-sided.

12 noon

Mr. Williams: Just one last question, if I might. Do you see that this bill or any variation thereof, allowing for the principle to go forward, would create any particular problems or difficulties with those members of the legal profession who practise before the courts--such as yourself and the association you represent?

Mr. Thomas: Do you mean, would this bill--

Mr. Williams: Would it create any difficulties in so far as practice before the courts is concerned? Is there any way in which you would see this as complicating the life of a legal

practitioner who is involved in litigation and dealing with criminal matters before the courts?

Mr. Thomas: That is a pretty broad question. I am not so sure I can answer that. I think it is going to create problems in the sense that there may be circumstances where you are calling into question the conduct of a police officer, but that is done every day by people in the courts and on behalf of clients, if it is justified.

I think the problem as we foresee it here is whether this bill, as drafted, will really serve the clients whom we represent very often. Those are the people, from business executives who have contact, right down to people who have minor confrontations with the police in whatever shape or form.

Whether we could say that this bill, as drafted, serves the public at large-- I do not think that we are concerned about how it affects the day-to-day operations of a lawyer; we try to serve the clients whom we represent and I just do not think that this--

Mr. Williams: It does not create any internal problems with the legal profession.

Mr. Thomas: No, I do not think so.

Mr. Chairman: Mr. Williams, in keeping with the earlier reference to another witness, I think the Deputy Solicitor General would just like to ask one question of Mr. Thomas and then Mr. Thomas will be finished.

Mr. Hilton: Mr. Thomas, if, as a result of a complaint, it is determined that there was a criminal offence involving a member of the police force--and that has happened--would it not then be a matter that the police chief and the police force would have to investigate? How do you get the PCC out of the picture in that circumstance?

Mr. Thomas: When the commissioner decides on the evidence he has in front of him that there has probably been a criminal offence committed, obviously the crown attorney is going to have to enter the picture. Yes, it will have to be investigated by the police, but, as you know, very often the Ontario Provincial Police are brought in to deal with the investigation.

Mr. Hilton: Within my memory that has only happened once, and that is in relation to the Johnson shooting.

Mr. Thomas: It certainly has happened in situations in the past. Are you suggesting that the chief of police will have to investigate the case where one of his own officers may very well have committed a crime?

Mr. Hilton: Yes.

Mr. Thomas: That may be the case, because if it is committed in Metropolitan Toronto and there is a suggestion that there has been a crime committed, I would think that the crown

attorney should be consulted. The crown attorney would then have the decision either to apply to your office or to the Attorney General to have the Ontario Police Commission look into the matter, or have an outside police force brought in to deal with it.

I know what you mean. The commissioner is sitting there with a conclusion he has drawn that a crime has probably been committed, and where does he go from there. I think he has to bring in the crown attorney and the crown attorney then can determine.

Mr. Hilton: Has it not been customary that the police investigate the police under those circumstances?

Mr. Thomas: It may very well have been customary. Whether it has been satisfactory or not is another matter. I think that is just promoting a reasonable apprehension of bias immediately.

Mr. Hilton: Have you ever in your experience encountered any circumstance where it was perceived that justice was not done in those circumstances?

Mr. Thomas: I have not personally; whether members of our association have, I don't know.

Mr. Hilton: That was the question I asked.

Mr. Thomas: But that does not mean that I would be in favour of continuing the system where the police investigate themselves where there has been a charge laid. There is just something repugnant about the police going out to investigate and take a statement and to do the things that the police have to do, the difficult things they have to do in their job, when it is one of their own colleagues.

I do not say they cannot do it, but I do not think they like that job any more than the public may like their doing it. I do not think they like it. I think if you asked them, they would say they would rather than not do it. They may have been doing it, and may have been doing a creditable job at it under the circumstances, but I do not believe that they like it.

Mr. Chairman: Thank you, Mr. Thomas, for appearing before us this morning.

The next witness is Mr. E. A. Rogers, who appears before us as a private citizen. Would you go ahead, Mr. Rogers, please?

Mr. Rogers: Gentlemen, I wish to thank the justice committee for granting this hearing on short notice, albeit it is the first time in over 16 years that this privilege has been granted, Mr. Arthur Maloney excepted.

I regard the Metro police as one of the best in Canada. However, I am unalterably opposed to the proposed complaint procedure in its present form, in that suppression could be

continued. My complaint in regard to Metro police is that on November 3, 1964, they are on record as having laid an unjustified criminal charge for a minor traffic violation and having recommended medical examination of a person enjoying near perfect health.

In the provincial court on November 3, 1964, they fabricated information to the late Magistrate James Butler which resulted in a six months' unlawful detention. On November 12, 1964, an identifiable Metro police officer fabricated information to the then senior physician of Whitby Hospital. On November 23, an identifiable former Metro police officer fabricated information to the then superintendent of the hospital, in writing, and the fabricated information became a portion of an alleged fraudulent medical practitioner's certificate. In fact two medical practitioners' certificates were falsely attested on December 7, 1964.

I respectfully submit that the misconduct by the police has been suppressed over the years to date by agencies of the Ontario government. The Honourable Roy McMurtry and most of his 10 colleagues are knowledgeable of these proceedings and have taken no remedial action. On the contrary, it is my view that they have suppressed it.

This will conclude my remarks for this meeting. If the opportunity is granted, I could make a statement in greater detail and substantiate my statements.

Thanks again for this privilege of being heard.

12:10 p.m.

Mr. Chairman: Thank you very much, Mr. Rogers.

Mr. Williams, did you wish to ask a question?

Mr. Williams: Mr. Rogers, first could you further identify yourself for the committee. Do you live in Metropolitan Toronto?

Mr. Rogers: Yes.

Mr. Williams: Whereabouts, sir?

Mr. Rogers: In East York.

Mr. Williams: I see. We have your address?

Mr. Rogers: Yes.

Mr. Williams: I think the committee finds your testimony of interest, but I do not believe it is the feeling of the committee that its purpose is to deal with individual cases here, such as you have cited, without naming names.

I gather from your evidence that the specific case you have cited has been referred in more specific detail, however, to the

Attorney General's or Solicitor General's office. Is that correct?

Mr. Rogers: That is correct.

Mr. Williams: And it has been under investigation for some period of time?

Mr. Rogers: Yes.

Mr. Williams: And you are using this case to illustrate what you feel is a form of injustice in dealings between the public and the police? You do not think the type of situation you are citing would necessarily be remedied if this type of legislation comes into law?

Mr. Rogers: The government has been in it so long that it controls just about all these agencies.

Mr. Laughren: Hear hear. Right on.

Mr. Rogers: I believe they are almost totally dependent on suppression for their continuance in office. I think if this case was exposed they would never have been elected in the last election.

Mr. Williams: You are suggesting the Ontario government is somehow influencing or being involved with the law enforcement agency activities in Metro Toronto under the Metropolitan Toronto Police jurisdiction?

Mr. Rogers: I suspect it, yes. I do not know how a thing like this could go on for 16 years without the Attorney General--in fact, I know that the Attorney General previous to Mr. McMurtry; I have evidence of it; it was suppressed before the Legislature.

Mr. Williams: Those are very strong allegations, Mr. Rogers. I am not here to argue with you about them, but certainly the Metropolitan Toronto Police operate independently and apart from the Ontario government. They are responsible to the Metropolitan Toronto council, and yet they have an independence from that body as well. I would be hard pressed to accept that there is some type of suppression of activities of the Metropolitan Toronto Police by the Ontario government.

Mr. Rogers: If I had committed the offences they committed, I would have been liable to 14 years' imprisonment.

Mr. Chairman: Thank you, Mr. Williams. That ends the questioning.

Thank you very much, Mr. Rogers, for appearing before us, and for your view--

Mr. Rogers: Do you think anybody else would like to ask any questions?

Mr. Chairman: I do not think anybody else has indicated

to me they wish to. So thank you very much--

Mr. Rogers: Pardon me. Is there going to be the privilege of giving this in more detail?

Mr. Chairman: Not really, at these sittings of the justice committee. We have speakers scheduled through till next Tuesday, and then we go clause-by-clause on this bill.

Mr. Rogers: I think allowance should be made for anything as important as that.

Mr. Chairman: You could submit a written brief if you wished, to the committee; but orally I believe this is all the time that is allowed.

Did you have anything more to add, Mr. Laughren?

Mr. Laughren: That is what I was going to suggest.

Mr. Chairman: Thank you.

Thank you very much, Mr. Rogers. if you wish to submit a written brief, you might do so.

Shall we adjourn then, until two o'clock this afternoon?

Yes, Mr. Wrye?

Mr. Wrye: Before we adjourn, if you remember, I would ask the opportunity to ask a couple more questions regarding this 90 per cent figure. Are you suggesting--I suppose it is the Deputy Solicitor General--that the only figures the Metro police are the number of cases of complaints and the number of cases dealt with? That they have absolutely no breakdown as to the disposition of those cases?

Mr. Hilton: I just do not know what they have. Since the chief is going to be appearing, Mr. Wrye, I suggest he will be able to answer that more appropriately.

Mr. Wrye: Is he going to bring a written breakdown of the--

Mr. Piché: I was going to suggest that word go to the chief through the clerk so that he is prepared to answer some of these questions, because obviously they are going to come up. If he comes here and asks for time, we will know that possibly the answers are not there. So I think it would be very important that he be advised these questions are going to come up and the committee will be looking for some answers.

Mr. Wrye: I think Mr. Piché's suggestion is an excellent one. He should know now that we should have as detailed a breakdown as the police can provide as to the disposition of those 800 or so cases. It is simply not good enough to suggest they were dealt with in a satisfactory manner. Does that mean they were withdrawn by the complainant? What does that mean?

Mr. MacQuarrie: I would suggest he be put on notice. But if you read the brief of the Toronto police, they provided the total numbers of complaints for the years 1975 through 1980 and have indicated that approximately 90 per cent of them have been resolved informally. As to whether there is a further breakdown of those figures, this information certainly could be asked for.

Mr. Philip: Mr. Chairman, I had the pleasure of being with Mr. Piché in his home riding and it was snowing up there, but I can tell you in my experience there's been more skating in this committee than there was up in Kapuskasing on Monday.

Mr. Chairman: It seems to be the consensus of the committee that the chief will be asked if there is a further breakdown, and if so, to bring the information with him.

The committee recessed at 12:17 p.m.

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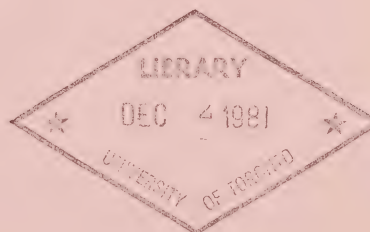
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT

WEDNESDAY, SEPTEMBER 30, 1981

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)
VICE-CHAIRMAN: Williams, J. (Oriole PC)
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MacQuarrie, R. W. (Carleton East PC)
Mitchell, R. C. (Carleton PC)
Philip, E. T. (Etobicoke NDP)
Piché, R. L. (Cochrane North PC)
Wrye, W. M. (Windsor-Sandwich L)

Clerk pro tem: Arnott, D.

From the Ministry of the Solicitor General:
Hilton, J. D., Deputy Minister
Ritchie, J. M., Director, Office of Legal Services

Witnesses:

Da Silva, G., Metro Organizer, Toronto Committee, Communist
Party of Canada
Nillots, E. B., Private Citizen

From the Universal African Improvement Association:
Clarke, E., President; Member, Albert Johnson Committee
Laws, D., Executive Director; Member, Albert Johnson Committee
Montague, C., Member

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, September 30, 1981

The committee resumed at 2:10 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Gentlemen, we have a quorum in place. Our first witnesses are Messrs. Clarke and Laws and Ms. Montague, but only Mr. Clarke is here, so would you come and start. As they come in, they can come and sit beside you. Is that all right?

There's Mickey, so we have a double quorum.

An hon. member: What side of the House is he going to sit on?

Mr. Hennessy: Over in this area?

Mr. Mitchell: They don't want you over there, Mickey?

Mr. Hennessy: Gee, they didn't realize what a good a man they were getting over on that side.

Mr. Philip: It's the cigar that we don't like, not Mickey.

Mr. Hennessy: That's a political statement.

Mr. Philip: Sure.

Mr. Mitchell: Could we have a copy of this brief from the clerk?

Mr. Clarke: Mr. Chairman, some of my remarks are going to be off the cuff because I think basically Dudley had a report.

Mr. Chairman: Excuse me, sir. Do you have a prepared brief?

Mr. Clarke: I just have the one copy. I can give it to you after.

My name is Ed Clarke. I was born and raised in Toronto. I am an army veteran. If I may, I would like to give some of my background so that the committee can be aware of my interest in this type of field.

I went to school in Toronto and then I went away in service. When I came back I belonged to the Negro Veterans' Association. I have been the secretary-treasurer of that for the last 25 years. I was founder and chairman of the National Black Coalition of Canada. I was founder and chairman of the Black Resources and Immigration Committee of Toronto. I am president of the Universal Action Improvement Association at present.

I have been heavily involved in the black community over the years, but I have also been involved in the general community. I was secretary-treasurer of the Kensington Urban Renewal Committee when it was formed 12 years ago. I was also founder and director of the Kensington Residents and Ratepayers' Association. I was one of the founders of the community of ratepayers' groups and residents' groups across the city at that time. I have been involved in all levels of politics at different times for a particular interest.

Dealing with the present: While we realize that the police play an important role in our society, they are primarily there to serve and protect, not to decide policy, not to be judge and jury. I come from a minority group that has been in Canada a couple of hundred years. In the beginning, it was not of our own volition; but in the last few years our immigration pattern has been the same as many other nationalities over the years.

Policing in this city has been a continual problem. While I may allude to some things there, most of us in this room have heard, read or seen complaints against the police over many years. When I was a kid growing up in the early 1930s in the west end of the city--the part that is called Hogtown--after six o'clock in the evening it was not fit for blacks to be on the streets.

There was a lot of harassment in those days, so in that particular aspect it has not changed. As a youth growing up in that part of the city, I belonged to the Police Athletic League and learned a lot of sports from them. In fact, the first time I ever rode in a plane was the Avro Anson in 1937 and it was a policeman named Masterson from old No. 3 on Claremont Street who took me but we still had problems with some of the policemen in dealing with that.

Over the years, while we have had innumerable complaints, one of the basic problems has been the police investigating themselves. It is onerous because it creates a disrespect for the police, it creates problems in the minds of people as to who is right and who is wrong. Therefore, an independent police complaints bureau, with its own staff, would be in the general interests of the public and it would achieve two purposes over the long run.

While we have the government saying at the present time that they could not do it because the police would not co-operate, I do not believe that the police would not co-operate. It will not be easy, but then nothing is ever easy, particularly when we want to improve things. It is pretty hard for the majority to believe some of the complaints that we in the minority make, and that is quite understandable. When you are comfortable, you cannot see it in the

same light. It is a matter of what is truth and what is understanding, and I believe that more understanding is the basis of truth.

We elect you as members of the Legislature to legislate the laws to govern us. We do not elect the police to do that, we do not elect the firemen to do that, we do not elect our service clubs, et cetera. So really what we are dealing with is whether government is willing to exercise the power that is given to it by the people to legislate and set policy and direction for the betterment of all our citizens in this province. On that basis, a clear direction of how the police will operate will remove a lot of the fears some citizens have and will remove a lot of the discrepancies between what should happen and what is actually happening in the streets.

There is physical abuse but the verbal abuse is worse. It is horrendous. All we have to go on is that you do not have to take our word for it as visible minorities and as black citizens in this province, but there have been many reports that we have had over the years by very eminent men--the last one was Cardinal Carter--who have not only alluded to these things but have suggested remedies, remedies similar to those which the black community and others over the years have asked the government to carry out.

While the bill has been drafted, and it looks as if it may pass, we do have a lot of reservations about the type of commission that would be set up as to whether justice would be done. We feel that it would not be under the present setup. We feel that an independent commission with its own staff is a prerogative that is necessary at this time. It is the only way that we, as a minority, can feel that we are an integral part of this society, that our fears will not only be addressed, but will be answered, and that the majority in their wisdom will see that the rest of us have the same opportunity, the same understanding, and the same redress before law.

If we deal with it in that light, we do not bring into conflict as to whether our police are the best in the world--I do not think anybody is quarrelling with that--and I do not think that anybody is quarrelling with the fact that we need policemen. What we are quarrelling with is whether those policemen, in carrying out the duties we direct, overstep their bounds and whether they have any rules that are enforced against them for doing it. We want the policeman to have the same rights that we have--no more, no less. If we do that, then we will achieve something. I say to you members of the Legislature, the ball is in your court. Thank you.

Mr. Chairman: Thank you very much, Mr. Clarke. Would you identify yourself?

Mr. Laws: I am Dudley Laws and I am representing the Albert Johnson Committee against Police Brutality.

Mr. Chairman: Do you have a statement to make as well, Mr. Laws?

Mr. Laws: Mr. Clarke's statement is different from mine. I think that he should answer your questions and then I will make my presentation.

2:20 p.m.

Mr. Chairman: According to the information we have, you both basically are of the same organization and are the same delegation. You are taking the position you each have statements, is that correct?

Mr. Laws: Yes. I represent a different group at this time than Mr. Clarke. He represents the Universal African Improvement Association.

Mr. Chairman: You represent the Albert Johnson Committee?

Mr. Laws: Yes.

Mr. Philip: Mr. Clarke, I hate to ask the same question to each delegation but I am like the fellow looking for something that he cannot find.

Interjection.

Mr. Philip: If I don't, then no doubt someone from the Liberal Party will and that is: Have you at any time, or has any member of your organization been consulted by either the Solicitor General (Mr. McMurtry) or a member of his staff?

Mr. Clarke: Not on this bill.

Mr. Philip: On the previous bill leading up to this?

Mr. Clarke: No.

Mr. Philip: Because the Solicitor General is claiming that he did consult with "hundreds of people in the visible minority community." We have not been able to find one. Do you know of anyone in the visible minority community who has been consulted by the Solicitor General on this bill?

Mr. Clarke: I have not heard of any and nobody has told me that they have.

Mr. Philip: Do you know of anybody in the so-called visible minority communities who is in support of the bill in its present form?

Mr. Clarke: That is a tough question. I cannot honestly say that there is, to my knowledge, anybody who supports the bill. Most of the people whom I talk to have stated that they want an independent review commission with its own staff, independent of the police.

Mr. Philip: The statements of the Solicitor General were not all that encouraging this morning. If we were not able to get this bill amended to have an independent police inquiry with

independent investigators, would your feeling be that this bill is better than nothing or that we should simply vote against the bill?

Mr. Clarke: I would say that while it may create more problems by not having a bill, better that we not have the bill if we are not going to have the improvements that are necessary to make it operate.

Mr. Philip: Can you tell me how many people would be involved in your association?

Mr. Clarke: At the present our veterans' group is slowly disappearing through age and death. When we began we had several hundred but we do not have that many now. In fact, I imagine that you would probably find that I am the youngest veteran in the city right now.

Mr. Philip: How many people would you say that you were speaking for in your present brief? Were you just speaking for yourself or have you had meetings in which you have discussed this?

Mr. Clarke: I have discussed this with our groups and our individual members. I have also discussed this with people on the street, white, black and other nationalities. I have talked to several different groups over the past several months, including Jewish groups, as to whether the bill was good, whether we could live with the bill, whether it would solve some of the basic problems, whether it would remove some of the hysteria on both sides and whether the present bill, in its form and operation, would return the respect and the camaraderie that the public and the police should have.

Mr. Breithaupt: What were their views on that?

Mr. Clarke: Their views were no.

Mr. Philip: In your view, would the people with whom you have been associated in your various groups, and you mentioned two groups so far, likely to come with complaints to use the bill in its present form if it were passed as is?

Mr. Clarke: I guess the best way I could answer that is that in the past couple of years there have been fewer and fewer bringing in complaints. That does not mean the problem is solved. It is simply the case that the average citizen who has a complaint feels he will not get justice or a fair hearing by using the present setup.

Mr. Philip: I have nothing more to ask the witness. I simply say that I agree with what he said.

Mr. Chairman: Mr. Mitchell.

Mr. Mitchell: I did not indicate a question.

Mr. Chairman: Is there anyone else?

Mr. Mitchell: I was going to suggest, Mr. Chairman, at

the time that you appeared to be on the horns of a dilemma that we could have heard both, because I am sure questions will arise from both as we have digested the material. That was really at the point at which you were speaking to Mr. Laws.

Mr. Chairman: Mr. Williams, do you wish to speak now or hear Mr. Laws?

Mr. Williams: Could I have some clarification from Mr. Clarke? Mr. Clarke, you talked about the group you represent as being veterans.

Mr. Clarke: I represent three groups: the Universal African Improvement Association, the Black Resources and Information Centre and Negro Veterans.

Mr. Williams: I see. So it was to the third group that you were speaking when you mentioned the numbers were being depleted through age and death. The other two organizations, then. To what extent are they representative of the black community.

Mr. Clarke: The Black Resources and Information Centre is primarily a resource and counselling group. We have a very limited membership because it usually consists of the staff and the board of directors. The Universal African Improvement Association is a group that at the present time has approximately 300 members.

Mr. Williams: I see. The veterans' group, which you said had something fewer than 200, is separate from the others.

Mr. Clarke: Yes, each one is separate and apart. Some of us belong to all three, but each is separate and independent of the other.

Mr. Williams: Okay, I just wanted to be clear on that.

Mr. Laws: Mr. Chairman, before I begin, I do not think I have enough copies, but I have some copies. Some are clipped and some not.

Man in his natural state being subdued will not recognize the qualities of mercy. Yet man in his natural state will recognize and protest the violation of his basic human rights and freedom.

I am here in order to present my opinion on the many complaints of police misconduct and harassment and brutality that occur in Metropolitan Toronto.

The period from 1969 to 1981 saw these actions of police misconduct creating a barrier between the ethnic community, the community at large and themselves, the police. During this period many individual community organizations and sometimes Metropolitan Toronto made recommendations and submissions before several boards of commissions and inquiries set up by the various levels of government. I am sure you all are familiar with some of these

reports, to name a few: the Morand, Maloney, Pitman and Carter reports.

2:30 p.m.

When one looks retrospectively at the extent of these reports, both in content of human values and in respect of their recommendations, there are clear and distinct indications that the need for an independent police complaint mechanism is of the utmost importance and urgency.

The reluctance in implementing an independent complaint mechanism is an act of procrastination which steals the fundamental credence from the basic principles of common human justice. Consequently, the total community suffers because of this kind of inaction.

The office of the Attorney General has portrayed policemen in this city as the untouchables, men and women above the law, giving them the power to investigate themselves and charging persons who dared to make complaints against them with causing the investigation of police officers. This deterrent prevents valid complaints against the police because of fear of being charged. Many persons are reluctant to lay a complaint against the police who in turn will conduct the investigation of themselves.

There are many serious problems facing our community: the problems of policing, housing, unemployment and the general adaptation problem to a new culture by immigrants to this country. Because of the continued problem of policing in Toronto, all these other problems have received a minimum of attention from the appropriate government agencies and community organization in the various ethnic communities.

If Bill 68 was designed to expose the malpractices of offending police officers, the authors of the said document have given total protection to the police and no serious thought to the complainants of police abuse.

The Albert Johnson Committee was founded on August 27, 1979, the day after Albert Johnson was killed in his own home by police officers from 14 division in the city of Toronto. The committee, with other individual groups and organizations, has organized several rallies and protest demonstrations against the acts of police violence.

Thousands of citizens of Metropolitan Toronto demonstrated their anger at the unnecessary killings that have taken place in Toronto over a period of 18 months. A call for an independent investigation into those killings was ignored by the Metropolitan Board of Police Commissioners and the office of the Attorney General of Ontario.

The refusal of these agencies to establish a board of inquiry to investigate the action of policing created a serious confrontation with the board of police commissioners, the office of the Attorney General and the citizens of Toronto. As a result of these confrontations, public outcry and press coverage, the

killings by certain members of the metropolitan police force declined.

It is important to note this decline did not come about by any positive directives from the board of police commissioners or the office of the Attorney General, but by the constant expression of concern and dissatisfaction of thousands of citizens in this city. The bill before you today must be redrafted and a new bill be introduced, a bill that will protect not only policemen but also the complainant as well.

Recommendations:

1. That an independent citizens complaint mechanism be established to process complaints against members of the metropolitan police force;

2. That the composition of the board include members of the visible minorities, as well as members elected by the public in municipal elections;

3. That charges causing the investigation of police officers be removed from the Criminal Code, in that it prevents valid complaints against the police;

4. That all initial complaints of police misconduct be taken by a member or members of the independent citizen complaint board;

5. That all investigations regarding the complaints against police officers be independently conducted;

6. That copies of each complaint to the independent citizens complaint board be submitted to the Ontario Human Rights Commission, the board of police commissioners and the office of the Attorney General.

In conclusion, I would like to state that, because of the continuing insensitivity and inaction by the office of the Attorney General and the lack of consultation with the community at large which brought about Bill 68, we cannot support such a bill which gives no protection to the complainant.

I submit that we cannot in all honesty advise members of our community to lay complaints to a board as described in Bill 68.

It is our opinion that the seriousness of the problem of policing in the city is being undermined by members of the board of police commissioners, the office of the Attorney General and the Metropolitan Toronto Police Association.

If we are to create an atmosphere of workable association with the police and the community, an element of trust must first be created and that can only be achieved by creating an independent citizens' complaint board, a board which will have the respect, confidence and trust, not only of police officers, but of the general public.

Mr. Philip: I can agree with the general thrust of your

brief but there are parts of it that confuse me or perhaps you have not elaborated enough. I would rather question you on those sections I have some trouble with, rather than simply question you on the areas I am in agreement with.

Number three, "That charges causing the investigation of police officers be removed from the Criminal Code, in that it prevents valid complaints against the police." Would you elaborate on that because I simply do not understand what you are trying to do there?

Mr. Laws: In many instances, people within our community have refused to make complaints against the police just by fear of being charged and the common charge that has been laid against them is a charge of causing the investigation of a police officer.

Mr. Hilton: Pardon me, there is no such charge in the Criminal Code.

Mr. Laws: Perhaps it is not in this--it is a charge that is being laid very commonly by the metropolitan police.

Mr. Elston: Presumably he is speaking about public mischief.

Mr. Philip: Perhaps what you are referring to then is that, and it has been told to this committee by other people, they fear laying charges against the police or complaining about a police officer because immediately then they are charged with something else under the Criminal Code. Is that what you are talking about?

Mr. Laws: No, what I am talking about is that many people have been charged after laying a complaint. After the complaint has been investigated, the police lay a charge against them, causing mischief, and in some instances it reads causing the investigation of a police officer. I think it is a public mischief charge or something like that.

Mr. Philip: Okay, now I understand what you are talking about and it is a point that other groups have agreed with in what you are saying.

2:40 p.m.

Number six: Why would you want something that bureaucratic? Is it necessary if you have an independent police investigation to create all that duplication of paperwork and reports?

Mr. Laws: Okay. I think this is necessary from experience. We all remember the case of Albert Johnson. Albert Johnson laid a complaint, but initially he went to the Ontario Human Rights Commission. That complaint was supposed to have been forwarded to the police complaints bureau.

Albert Johnson went to the Ontario Human Rights Commission eight times before his death. After he was killed, for approximately two or three weeks no one knew where this complaint

was. Finally it was found and sent to the police complaints bureau. Even after his death nobody bothered to investigate the beating of Albert Johnson that took place on May 12, 1979. That was prior to his death.

I'm saying that if more than one of these government agencies is monitoring a complaint or has knowledge of a complaint then I believe something can be done. I think it is a very serious situation when a man can lay a complaint against a government agency and be killed by the same agency, and nobody feels that it is important enough even to look at the original complaint that was made against that person. That is why I think this is valid.

Mr. Philip: I guess my concern as a practising politician is that I have had the experience that, when people have filed complaints in other areas--not in police work, but in other areas--with several different ministries or two or three different ministries, often it delays the investigation into their complaint, because there are several ministries all trying to get information at the same time. Indeed, the same thing has happened where people have gone to two or three politicians with the same complaint at the same time.

You are just asking for a filing, I gather, with the Ontario Human Rights Commission, not an investigation at that time, when obviously the independent police commission would be investigating the complaint.

Mr. Laws: What I'm saying is that when the copies have been sent to the Ontario Human Rights Commission, if they find that within their jurisdiction there has been a violation of human rights they would then proceed, and they would work with the citizens' complaint bureau in investigating the problem. I think there can be two different elements within the same complaint that should be investigated.

Mr. Philip: If your independent investigator were properly trained, would it not be his responsibility to refer the complaint to another body if it fell more appropriately under that other body? For example, if the independent investigator decides that there is a violation of the Criminal Code then he would in turn refer that to the Attorney General to lay charges; if it fell under the Human Rights Code he would automatically refer it to the human rights commission, would he not?

Mr. Laws: From experience, again, I would not leave that to chance or to the discretion of a body. I think it should be mandatory. I think that when we begin to leave things to chance and to the discretion of individuals without setting a directive, this is where we have a problem. I think it should be done.

Mr. Philip: In the various groups that you have been associated with have you ever at any time been contacted by the Solicitor General or his staff on the matter before this committee or on previous bills leading up to the present bill?

Mr. Laws: I have not been contacted, but since 1968 Mr. Clarke, myself, Mr. Wilson Head and several other members of the

community have met, long before the incident of Buddy Evans or Albert Johnson. We have had several meetings with Mr. Roy McMurtry, we have had meetings with city council and we have appeared before a lot of commissions where similar recommendations were made. We have done our part to get changes brought about.

Mr. Philip: But at no time did you talk about this bill specifically or recommendations regarding this bill or its predecessor bills.

Mr. Laws: We have not been contacted about this bill by anybody.

Mr. Mitchell: A supplementary, Mr. Chairman: During those meetings with Mr. McMurtry that you said you had, Mr. Laws, did you at any time during those meetings suggest to him the enactment of a bill and the direction that it might have followed?

Mr. Laws: Certainly we did.

Mr. Breithaupt: And these were several years ago?

Mr. Laws: Several years ago.

Mr. Philip: But you have not been contacted on this bill?

Mr. Laws: No.

Mr. Philip: Do you know of anybody in the "visible minority community" who's in support of this bill in its present form?

Mr. Laws: No, sir.

Mr. Philip: Would you say that in a majority of groups in that community the leaders, such as yourself, were fully knowledgeable about the bill and its contents? Is it well known exactly what this bill would do or, rather, would not do?

Mr. Laws: The bill is well known in its previous form and in the form in which it is now presented.

Mr. Philip: Thank you for an interesting brief. No further questions.

Mr. Chairman: Thank you, Mr. Laws. Are there any other questions of Mr. Laws?

Mr. Williams: Mr. Laws, it may be nothing more than grammatical structuring of sentences, but I have a couple of clarifications I would like. On page two of your brief, the second paragraph from the bottom:

"Thousands of citizens of Metropolitan Toronto demonstrated their anger at the unnecessary killings that have taken place in Toronto over a period of 18 months. The call for an independent investigation into those killings was ignored by the board of

police commissioners and the office of the Attorney General of this province of Ontario."

Could you elaborate on that? I'm not aware of what you are referring to.

Mr. Laws: After the killing of Albert Johnson we had meetings first with the board of police commissioners--I think it was two days after Mr. Johnson was killed. Then we had a meeting with Mr. McMurtry, and we demanded an investigation of the killings and of the policing in Metropolitan Toronto. I believe members of city council also requested that inquiry.

Mr. Williams: I guess the words that are giving me some difficulty are the words "unnecessary" and "killings" in the plural.

Mr. Laws: It is their opinion and the opinion of several people--thousands, I think--in Toronto that some of the nine killings which took place within the period from 1978 to 1980 were not necessary.

Mr. Breithaupt: It wouldn't have had to work out that way.

Mr. Laws: I think that if different approaches had been taken by the police some of those people would not have been shot.

Mr. Williams: So you are identifying nine specific killings as being unnecessary killings that involved--

Mr. Laws: I didn't say they all were unnecessary; I say that out of the nine some were unnecessary. I did not state (inaudible) the ones that were, but if you look at the files--I may have some of them here--definitely it is my opinion that if some of the police officers had been trained properly in the art of self-defence, if different approaches had been used, I think some of those lives would have been saved. I definitely believe that there was no need to kill those nine persons.

As I have said in my brief, after the demonstration--and we all know that--after people went out and demonstrated, the killings by policemen have declined in Metropolitan Toronto. I do not think that was coincidental.

2:50 p.m.

Mr. Williams: That brings me to the top of page three. On this point you indicate that "the killings by certain members of the metropolitan police force declined." Were the same police officers involved in the same nine incidents that you refer to? I'm not clear when you say that there were certain members of the police force. It sounds as though certain ones were involved in all of these incidents.

Mr. Laws: You could put it the other way. I didn't say they all were killed by the same police officer.

Mr. Williams: I didn't know what you meant by "certain members of the police force."

Mr. Laws: That word was used deliberately, because when a member of the community makes a statement about the police it is assumed that that person is speaking and condemning all police officers. I used that word "certain" in a deliberate form to indicate that all policemen do not shoot citizens in this city.

Mr. Williams: On the recommendations themselves, as you have set them out in your submission, you say in number two, "that the composition of the board include members of the visible minorities as well as members elected by the public in municipal elections."

A number of options have been proposed by different groups coming before the committee. I suppose the first part of your recommendation, "that the composition of the board include members of the visible minorities," would be taken care of by the present section in the bill that provides for the metropolitan council to appoint one third of the membership and as well the Metro police commission to appoint a third, and then there would be an appointment of those trained in the field of law. I suppose in all three of those areas we could have people whom you identify as representatives of the visible minorities as part of that membership.

Mr. Laws: How could you? The bill did not say that. The bill said metro council can appoint them; it did not say Metro council should appoint members of the visible minorities. They can appoint Mr. Givens again to the board, although he is a member of the board of police commissioners.

Mr. Williams: You're stating it as a matter of being a mandatory thing under this bill that they must be appointed.

Mr. Laws: Certainly.

Mr. Williams: I see. Okay.

Mr. Chairman: Mr. Williams, I think Mr. Clarke has a response to you on that.

Mr. Clarke: John, this hasn't been the first time that these types of recommendations have been made to the government or the police commission. I have been involved for 20 years, and much to my distress we have been continually harping on the police about how to make improvements over the past 20 years. Very few of them have made changes, and these same recommendations keep coming up continually. But the present bill does not say minorities; it does not say visible minorities; it does not say native people, women, et cetera, et cetera.

Mr. Williams: I presume, on the other hand, though, that you would concede that while the bill in its present form does not require that representatives of the visible minorities be members of the board it is nevertheless quite likely that those who have

the power to appoint could well appoint people from those communities as part of their recommendations.

Mr. Clarke: That would be their prerogative. But we haven't seen that done in the past in such a way as to lead us to believe that it would be done at this particular stage.

Mr. Williams: So it's a wait-and-see situation as far as you're concerned.

Mr. Clarke: Yes.

Mr. Williams: What's your view on having representatives or members of the visible minorities elected by the public in municipal elections? This factor--

Mr. Clarke: Could you say that again, please?

Mr. Williams: --or approach was put forward by a number of groups before us: the concept of having people from within the visible minorities elected by the public at large in municipal elections. Do you feel that this is a--

Mr. Clarke: For which purpose?

Mr. Williams: For serving on this board. That's what is suggested in recommendation two.

Mr. Laws: I believe that a mixture of representation is proper. I think that if we have members from the visible minorities and elected representation from the general public, we will get honest opinion. I think we could monitor the actions of police. What I am definitely opposed to is any form of equal representation of the police association or the board of police commissioners on that board.

Mr. Williams: Are you saying that you would like to see elected municipal representatives sitting on the board--but they themselves would not necessarily be members of the visible minorities? They would be serving in their capacity as members of elected local councils.

Mr. Laws: Yes, whether they are minorities or not, they would be elected.

Mr. Breithaupt: The idea was put forward to us on this point that a separate election of individuals for this purpose, in the same way as those elected for the school board are for that purpose, would be one way of having representation of a number of people rather than the appointment by the Metro council.

Mr. Clarke: How far would we carry that?

Mr. Breithaupt: This is what I was wondering. Would you see that as a practical thing that for this one thing, important as it is, nominations and a separate Metro-wide election or perhaps one in each of the municipalities--one representative;

something like this--would be a way to do this? Do you have any view on that suggestion?

Mr. Clarke: Unless you are going to carry it right through to having city-wide or Metro-wide elections to the police commission itself on the same basis. Otherwise it would create more problems than it would solve. We would then be getting into a popularity contest and not the matter of dealing with the issue.

Mr. Laws: The reason I distinguished between minority representation and elected representation is that there is no guarantee a minority would win an election to be on the board. I am saying it should be definite that a majority representation would be guaranteed. I do not know how many would be on the board, but you could have a section of the board for anyone who wins that election.

Mr. Williams: Just one last clarification, if I might, on the last page, page four. Again I guess it is the choice of words that has me a little uncertain as to what you are really getting at. "It is our opinion that the seriousness of the problem of policing in the city is being undermined by members of the board of police commissioners, the office of the Attorney General and the police association."

Mr. Laws: I say that because several people, including Mr. Givens, Mr. McMurtry and others, have continuously said that only a few people in the community are making noise. They are not elected spokespersons for the community. Personally, I do not believe that. I have to be the executive director of an organization, which I am--the chairman of the Albert Johnson Committee--to see the injustices that are being meted out to a certain sector of the community at this time. I do not have to be a representative of an organization of 5,000 or 10,000 individuals to recognize injustice.

I think each person in the city, each citizen in the city, should be able to come here today and say to you, "Look, I am not content with the way in which policing is administered in the city." He hides under the guise of being spoken to by the police association; he relies on the police association, on the police commission, to give him directives on policing. In my opinion, these two organizations or agencies are serving their own individual interests.

Mr. Williams: When you say "undermine," I guess what you are alleging is that these boards or individuals are minimizing the problems of policing in the city at this time.

Mr. Laws: Considerably undermining. They do not believe it is serious. They do not give serious consideration to the problems which they themselves have partially created because of their inaction.

Mr. Williams: Again, I just wanted to get clear what the nature of the allegation was. It was just that one word the implication of which I was not sure from your point of view.

Mr. Wrye: I just want to review again a couple of your recommendations. While I am certainly sympathetic to what is the key recommendation in the first half, I must admit I have a problem with a couple of the others. The first one is recommendation three and I know Mr. Philip discussed it with you a little bit. I will tell you why I have a problem and perhaps you could suggest a way out of it for me.

3 p.m.

While we have heard from a number of witnesses that the threat of charges or the actual laying of charges can very often follow or precede any suggestion that a complaint is about to be lodged, I think you would agree there may simply be on occasion--coming from whatever source--a very frivolous, unjustified complaint against a police officer. It is simply not the case that any community has citizens who are always right and the police are always wrong. I think it would be extreme to suggest that. What do we do then in the case of a citizen of any community who lays a truly maliciously frivolous complaint against a police officer or against the force? Should the law not be brought to bear against that kind of complaint?

Mr. Laws: If the law at the present time prevents a citizen from making a valid complaint against a police officer because of fear of being charged, I think it supersedes the ones laid against a police officer that had no weight at all. I think if you are going to protect the community, the citizens themselves, there should be no apparent deterrent to prevent them from making that complaint.

Mr. Breithaupt: You would rather err in one way than in the other.

Mr. Laws: I think all complaints should be looked at and investigated regardless of the possibility of a complaint laid against the police that is not valid.

Mr. Wrye: As you know, the bill does provide that complaints can be laid at a location other than a police station; even this bill has that. If we then add to that an independent investigation by an independent body, does that not then resolve your problem of citizens whom you feel--with some justification because we have heard it too often not to have some--are being intimidated?

Mr. Laws: In the first place, that recommendation becomes invalid if the initial complaint is taken by the independent body. I could not and I do not think most community organizations could support a complaint mechanism that gives the police any responsibility in taking the initial complaint. I think this is the most important part of the whole process of inquiry. The police should have nothing whatsoever to do with the initial taking of complaints. If this is not recognized by this committee and the Attorney General's office, then I believe you may as well forget the complete bill.

Mr. Wrye: I was going to get to that. You are suggesting

now that this bill, without those kinds of very substantial amendments, is worse or no improvement on the present procedure and consequently we should vote "no" on it? Is that what you are saying?

Mr. Laws: Certainly.

Mr. Wrye: Let me go to recommendation six. Again, I have a problem with this, perhaps along the same lines as were referred to earlier. I have the suspicion that if these complaints are sent all over Metro Toronto and Ontario, it has been my experience as a politician the more people who are handling them the less appears to be their concern about them. Perhaps the human rights commission would get it and say, "The complaints commissioner has it; we'll let him handle it." Meanwhile the complaints commissioner has it and he says, "The board of police commissioners has it," and eventually nobody does anything.

You seem to have suggested that is exactly what happened in the Albert Johnson situation--that a number of people had it and nobody was really doing anything.

Mr. Laws: I did not suggest that. I think it was only--

Mr. Wrye: The Ontario Human Rights Commission took the complaint, sent it on and then forgot about it because they sent it on to the police commission, was it not?

Mr. Laws: Yes, but the police commission said they did not have it.

Mr. Wrye: Right, but you will agree with me the human rights commission, having sent it on, simply said--

Mr. Laws: I don't think they did. Nobody knows what happened to the complaint.

Mr. Wrye: But the human rights commission view seems to be, "We sent it on; we have done our duty." Do you see what I am getting at? If about five different organizations get these complaints there may not be any one organization you could turn to or I could turn to to say, "What have you done about complaint number 15?"

Mr. Laws: What I am saying is this: If Albert Johnson had gone to the Ontario Human Rights Commission with a complaint or even if he had gone himself to the police complaint bureau and made the complaint, they could not have said, "Look, we did not have a copy of this." I am saying this is an independent board we are talking about that will submit a copy of these complaints both to the Ontario Human Rights Commission and to the office of the Attorney General and to the police association perhaps only for filing--

Mr. Breithaupt: But the responsibility is the board's.

Mr. Laws: The responsibility is the board's to see that

action is taken, whether it's the violation of human rights or any other violation.

Mr. Wrye: zi effect the police commissioner just as a matter of course would have the complaint typed up and then copies sent out to these various groups. You just want them on file.

Mr. Laws: What we are really talking about are the inadequacies of the present structure. It magnified itself into the case of Albert Johnson. It is even more disgraceful that even after the death of Albert Johnson, after eight complaints to the Ontario Human Rights Commission, nobody gives a damn what took place on May 12 when Albert Johnson was beaten severely by the police officers from the same region who were involved in this killing on August 26, 1979.

Mr. Wrye: I am not from Metro Toronto but can I just ask you, following the incident in May, did Mr. Johnson--it was some two and a half years ago so I would not remember--lay a complaint following the incident in his home in May?

Mr. Laws: He laid a complaint with the Ontario Human Rights Commission.

Mr. Wrye: And did he lay a complaint with the bureau?

Mr. Laws: They in turn said they sent it on to the police complaints commissioner. That was some time in June. Albert Johnson was killed in August. I think it was further disclosed the complaint was not sent until about two or three days or a week before his death. That is the kind of thing we are talking about. On top of all this, he went eight days before he was killed to the Ontario Human Rights Commission. He went there eight times and all those things are documented.

Mr. Wrye: Clearly an inadequate response.

Mr. Chairman: Mr. Philip, this is your second time.

Mr. Philip: I had a motion, but I will save it until after the next delegation.

Mr. Chairman: We have two more delegations.

Mr. Philip: I will save it until the end.

Mr. Chairman: Thank you very much, gentlemen, for your presentations and for taking your time to appear before us.

Elak B. Nillots.

Mr. Laughren: Mr. Chairman, this is a summary of policing problems.

3:10 p.m.

Mr. Chairman: That will be exhibit 16 I believe.

Mr. Laughren: That was presented by the--

Mr. Chairman: Yes, that was presented by Mr. Laws near the end of his presentation.

Mr. Laughren: I have not examined all of the content of it. I have read about half of it, but it is an argument for having some kind of research assistance available to committees because it really does give you a feeling of the cumulative problems that the community has faced and the feeling by people in the community. We have this because a delegation presented it to us, not because the committee, which does not have that kind of resources, prepared it for us. It is the kind of thing that should be made available by the committee to the members of the committee.

Mr. Chairman: Mr. Laughren, we really would not know where to start, what research to commence with.

Mr. Laughren: They did.

Mr. Chairman: No, but until the witness appeared before us, we would not know what tack to take. You could not say to a researcher, "Please go and research everything to do with the police in the last 10 years in Metro Toronto." You are saying there should be someone here who then could get us information?

Mr. Laughren: I am saying there has been continuing debate over the years as to whether committees should have research assistance. This is an argument for having that kind of assistance, not on this committee here because the assistance is not in place, but it is an argument for having assistance for committees. We see a delegation that does a summary for us that we would not have had otherwise.

Mr. Chairman: You must excuse my ignorance and that of numerous members in here, being new boys, in not realizing this was an ongoing contention.

Mr. Williams: Mr. Chairman, you cannot use that excuse any longer. You have been around here too long now. You are not a new boy any more.

Mr. Chairman: Mr. Williams, in fairness that is the first I have heard of the suggestion that committees have researchers on hand at all times to assist them.

Mr. Wrye: I thought we could milk this new-boy stuff for a couple of years.

Mr. Williams: It applies equally to our fellows over here.

Mr. Philip: As the former chairman, Mr. Chairman, I think I can say to you that you are not doing a bad job as the new chairman and you can no longer use the new-boy tactic because you seem to be doing quite well on your own.

Mr. Chairman: I look with grains of salt at that, Mr.

Philip, something else is coming later today for sure. Mr. Nillots, you are here as a private citizen?

Mr. Nillots: Yes, Mr. Chairman, I am here as a private citizen.

Mr. Chairman: Would you please proceed?

Mr. Nillots: My presentation is divided into six parts. The first part is the introduction.

Mr. Williams: I am sorry. Is there a written brief?

Mr. Nillots: No, there is not. This is a handwritten outline that I have. I wish I had a typewritten outline so I could have--

Mr. Williams: In your submission, do you identify yourself more specifically? In the first part of your brief, do you indicate who you are and where you are from?

Mr. Nillots: I do repeat some of the subheads of the various parts. It is in six different parts. The first part is the introduction and the second part is the nature of public complaints and the third part is on preventive measures to nip some of the complaints in the bud.

The fourth part is what I call the creation of a gestor or proctor. This individual I see as an ideal public agent to accomplish the task of nipping complaints in the bud and to pave the way for an independent body some day if such an independent body is necessary.

The fifth part will deal with the need for a visible director of public prosecutions. The sixth and last part will deal with minor amendments to Bill 68 as I see it.

This is the introductory part. Bill 68, as I see it now, is like setting up a clinic to deal with diseases and to define what diseases are to be treated once the clinic has been established. My approach is to highlight some of the known diseases as I see it right now, so as to come up with a clinic which is well-equipped to handle these diseases.

The nature of public complaints based on studies like the Morand report of 1977 against the police can be divided into four separate categories. The first category which is "A" on the list is that of provocation or harassment. The second category is that of aggressive methods of arresting suspects. The third category as I see it, is heavy-handed interrogation methods. And the fourth and last part is detention in difficult surroundings.

Examples of harassment which are quite known to an incredible number of people come from sources such as workers on picket lines, usually in a locked out situation who see the police as interfering with their hard fought rights and acting with management when these policemen attempt to keep the public lanes open.

The second instance of harassment is problems with police patrol cars which are sometimes seen in certain neighbourhoods as more or less as putting these neighbourhoods in besieged situations. This normally happens in places like Harlem or Watts or the south, but I do not think we have such a problem in Metropolitan Toronto. There are no concentrations of ethnic groups as such. We do have some Italian neighbourhoods, some predominantly Yugoslav neighbourhoods and so on, even Chinatown, but we do not have problems with blacks as such.

Then another instance of harassment as I see it comes from youths who see police as somewhat too eager to break up youth gatherings on no more than mere whims. This, too, I do not think we have such a problem in Toronto as such.

The fourth instance of harassment comes from unpopular but vocal associations such as the Ku Klux Klan, homosexuals, lesbians and so on. But I guess these individuals will make their own presentations.

Now, the methods of arresting suspects: This is perhaps the most controversial throughout the world. Nobody is ever quite sure in advance of exactly what limits there are on police powers of arrest and detention, and how they can successfully resist what they understand to be unlawful arrest. The most prudent yields to the police at all times for the sake of personal safety. A policeman is equipped to function as a lawyer, judge, enforcer, and executioner in a matter of minutes if need be, in certain situation.

The third part of what I see to be the major category of complaints against the police, those with, as I said, heavy-handed interrogation methods: The foremost examples are beating up a nonco-operative suspect and subjecting him to extensive interrogation at the hands of several officers. Some suspects can be kept awake for 30 hours or more without rest or sleep. I have not heard any rumour to the effect that this sort of thing happens in Toronto.

3:20 p.m.

The last list on the complaints is detention in difficult surroundings such as inadequate heat, putting a young, first offender in the same cell with a habitual convict with a known history of brutality and violent behaviour and so on.

These are what I see to be the major examples of complaints that people have against the police and this is why I propose what I call the gestor or proctor. I will come to why I selected the name gestor or proctor in a minute. Now, by way of general comments I will say that an independent board is maybe too smug and bureaucratic right from day one.

Moreover, since the police organization in the metropolis has a history going back to 1834 and the present metropolitan police force was established in 1957, a complaints institution established this late in the day cannot effectively monitor this

police organization. The police body runs on over \$200 million a year with over 5,000 officers supported by an additional 2,000 men working out of 18 divisional stations.

In 1980 this police organization had to contend with over 800,000 offences. Admittedly, the bulk of these offences were in relation to traffic matters. To repeat, it is premature to make demands now for an independent complaints board with a new body of new personnel of various backgrounds, who are unfamiliar with each other to begin with, to open the door on the first day of business to any member of the population of half a million offenders and nonoffenders to lay complaints against any of these 5,000 policemen.

An experienced criminal can throw a wrench into police investigations by making unfounded accusations knowing that the effect of such accusations always undercuts the objectivity of an investigating officer. This is the reason why I support the retention of a public mischief charge, as well as the 30-day delay in bringing the public complaints commissioner on to the scene.

Moreover, depending on the nature of the investigations, the police may deal with newspaper, television and broadcasting personnel, doctors and hospitals, defence lawyers, public representatives, family members, of all kinds and all types of individuals, fire station personnel, insurance executives, the Solicitor General's office and the Attorney General's office, among others. So, I say no to a concurrent investigation of complaints by the commissioner at this stage.

Moreover, an independent complaints board will find itself forever attempting to reconstruct incidents which have taken place in the past so as to establish credibility and assign blame accordingly and shall, to this extent, merely be duplicating what the courts have always done, to the dissatisfaction of nearly everyone.

Nevertheless, the concept and the need for an independent complaints board cannot be dismissed out of hand altogether. To lay the foundation for an independent body some time in the future if this is necessary, I propose the gestor--a name chosen for easy recall. The proctor or the gestor will be a public agent at the beck and call of (1) the police, (2) the public and (3) a suspect. He will be active in these situations.

As soon as an officer makes an arrest he shall advise the suspect of his right to have a gestor present. The gestor will have the right to be present and remain on the scene where there is a confrontation or likely to be a confrontation between police and others. The proctor leaves the scene on his own initiative or as soon as an attorney for the suspect arrives.

I rest the need for a gestor on the following grounds: In too many confrontations, the police arrive on the scene with one or more of: (1) cameras with tape machines, (2) rifles with telescopic sights, (3) water cannons, (4) armoured vehicles, (5) billy clubs and truncheons, (6) horses, (7) handguns, (8) crash helmets with visors, (9) tear gas with smoke canisters, and (10) handcuffs.

The other side may have one or more of: huge numbers on their sides; bricks or stones; petrol bombs; balaclavas, mainly in Europe; guns, knives and slingshots.

Whenever we have mass formations of unemployed youths, striking workers, or homosexuals on the one side, and the police on the other, with each side so well armed, there must be somebody between them besides television and newspaper men to mediate and water down the confrontation with these active persons.

I will drink all the water you have in this room before I am through.

The gestor shall have the right to order the transfer of any suspect from division A to division B, especially so in situations where the suspect may have beaten up a police officer, or is charged with taking undue liberties with police officers. No gestor can make more than two transfer orders in any (inaudible). The object of the transfer is always to place the suspect in a neutral division.

While a suspect remains in detention, the police will do everything to enable a gestor to have access to the suspect, to satisfy himself of the suspect's wellbeing, and shall then issue a certificate of apparent wellbeing to the officer in charge of the division. The reasoning here is to lessen the incidence of suspicious deaths while in police custody, which is common in some parts of the world. We have not seen this sort of thing in Metropolitan Toronto, and I like to sleep thinking that this will never happen.

Nevertheless it has happened in West Germany: we had the Baader-Meinhof gang, who went on a rampage because a member of the gang died while in police custody, and also we had the famous case of Steve Biko, who went into the police station when he was only a (inaudible) and was beaten to death. I do believe that this sort of thing does not happen in Toronto, and most likely will never happen.

Under no circumstances will a gestor instruct the police in the execution of their duty. He is there merely as an active participant, and a gestor will not make an appearance in any court of law. The reasoning here, once again, is that, as I say, on a given scene you might have anywhere from 100 to thousands or more individuals, and since the object of creating a gestor in the first place is to have an independent mediator, he can only see what happens from one point of view, from one strategic location also, and so on and so on.

So in order to retain his confidence, so that whatever he says he saw will be final, he will not be subjected to any kind of interrogation or court appearances and so on and so on.

Where any individual--here I come to the matter of compensation--has suffered lacerations, abrasions or bruises at the hands of the police, that individual shall be entitled to a compensation not to exceed \$750. In cases of insults and the like, the complainants shall be entitled to claims of up to \$400.

Complaints older than six months, before the coming into effect of Bill 68, will not be entertained.

There are three reasons here for the need for compensation. The first is that the complainant may have been visiting Toronto for, say, a rock concert, or perhaps has, since the incident, moved out of the metropolis, and may be reluctant to incur costs to help with investigations.

3:30 p.m.

The second reason for compensation is that we have too many individuals who receive social benefits and pensions of something like \$60 a week, and they may be unable to make the necessary outlay for travelling even on the bus, or taxicabs, as the case may be, in order to help either the police or the public complaints commissioner with his investigations.

The third and last reason I give for the need for compensation is that monetary compensation will contribute to efficiency, because the first and second principals, namely the police investigators and the complaint commissioner, are paid public servants and might be inclined to foot-dragging should they have unlimited free access to a complainant.

I suggest that the Metro police association, of course, should be levied for all moneys for these compensations, and the reasoning here is that, as the bills to the police go up, they may have to take steps to discourage their colleagues from exceeding the bounds of propriety, very much like an insurance premium. They ought to have a stake in having fewer complaints against the police.

This is one of the last parts of my presentation; and that is the need for a director of public prosecutions. I think the idea of concentrating the offices of Attorney General and Solicitor General in the hands of one person is too much work, for a population of 8,000,000 or more. I think we ought to have a director of public prosecutions because the crown has lost an incredible number of cases in the past few years, since 1977; the major examples being the case against Gordon Allen, the case against Guerin, the case against Bakzur, and the case of that North York bank robber, and I think that we ought to be able to convince the police at this stage.

In 1980, the police were able to clear up only less than 52 per cent of the cases and offences that they dealt with, on a budget of \$200,000,000. They carried the cases they were unable to solve from one year into the next; so actually they may have been doing a poorer job than they do now.

It may very well be that the insurance companies we have in town are so generous with their money that in nine out of 10 cases they probably settle claims for break and enter without too much ado, so that the police go without adequate criticism. But one does not get the impression that 52 per cent, on \$200,000,000, is doing a good job.

Mr. Philip: How would you compare that with other cities?

Mr. Nillots: That is one thing I do not know, I must confess; but still 52 per cent does seem to be a little too bad. I think, to deal with that, the problem of comparison is perhaps that someone can always tell you that the composition of Metropolitan Toronto in terms of economic factors or ethnic factors and other social factors is so different from, say, Montreal or Vancouver or Melbourne or Los Angeles or Detroit and so on that you would not be doing proper comparisons, say, if you had the figures from these cities.

Mr. Philip: I am willing to bet that Vancouver would be quite happy with a 52 per cent success rate.

Mr. Nillots: Well, frankly, after reading the police report, I got the impression that this would be the best place to set up workshop as a burglar, because you have a good chance of getting away with whatever you got. They cannot settle something like--anyway.

Moreover, I think there is a chance we might see the \$50,000-a-year police constable before 1990, so I would suggest that we should limit the career of a police officer to individuals with at least a BA and that as of 1986, for instance, we should only take graduates of the law enforcement program at Humber College into the police service because of the nature of the crimes, the incidence of terrorists, and the incidence of some of the weapons they are using.

In Europe we have got to the point where they now use grenade launchers, the RPG7, to throw rockets at individuals. I think it would be prudent to have individuals with backgrounds in physics and chemistry actually do the normal police patrol work as opposed to someone with a mere grade 10, 11 or 12.

One reason I have this suggestion is it makes the police too vulnerable in all kinds of respects. You always have a stream of management consultants, and there are a number of them, come in and suggest new ways of doing things. We should have highly qualified individuals to begin with, who can see for themselves where the problems are and what can be done and how they can help to implement those solutions as opposed to having management consultants coming for one week or two weeks and making all kinds of suggestions on the basis of these visits.

This is the last part. The minor amendments I have are that the maximum number of lawyers--this is with reference to section 4(4)--should be no more than one third of the board's membership, and also section 8(4) should be amended so that where an admission of misconduct has been made such admission will be placed on personal records, but shall be withdrawn if the officer does not feature as a principal in similar incidents within 12 months. That is it.

Mr. Chairman: Thank you. Mr. Williams.

Mr. Williams: Mr. Nillots, you have certainly brought

some interesting and novel ideas to our hearings that we had not heard before, as to the type of structuring you would like to see set up.

Have you been involved in the study of law enforcement work before? You seem to be fairly--

Mr. Nillots: I have studied quite a bit.

Mr. Williams: What kind of background do you have in these studies? Are you taking courses?

Mr. Nillots: Yes. I was taking administration courses in Springfield, Illinois, but it is based mostly on having lived in three states in the US, namely, California, Illinois and Minnesota, as well as having lived on three continents--Africa, Europe and North America--so I have had a chance to see a number of ways of dealing with the public on the part of the police. Besides that, my uncle used to be the inspector of (inaudible) police when I was growing up, so I lived on a police academy for some time.

Mr. Williams: I suspected you had some background.

Some of the terms you refer to in your submission, "gestor" and "proctor," again I have heard these terms used in other jurisdictions. You didn't expand on the role of a proctor.

Mr. Nillots: There is a choice. One or the other would be fine. I selected the names to make it easy to advertise. Say you call the proctor at 212-5555 or something like that, something everybody will remember, so that we can plan some sort of police etiquette. If you are arrested by a police officer keep your hands out of your pockets, if you are holding anything, drop it, or something like that, in the subways. In all cases, it would be very convenient just to have a gestor at 212-5555, something short, something a Chinese man can pronounce, something an African can pronounce and something a Yugoslavian can pronounce, so a "gestor" or "proctor," one of the two would be fine. They are the same and equal.

I have a weakness for empire building, so some day, for instance, we can have a proctor with a telephone in his car, as well as a typewriter, so where there is a confrontation involving 18-year-olds who are on a rampage because they don't have jobs, this proctor can sit down in his car and type a letter guaranteeing them at least an appointment with the Minister of Social Welfare tomorrow morning.

Mr. Williams: I have always had the term "proctor" characterized to me as someone who is the equivalent of our Ombudsman.

Mr. Nillots: That is right.

Mr. Williams: I think that is what you are saying here, except that this would be an Ombudsman working in the field, trying to be there on the spot when these things are happening.

Mr. Nillots: That's right.

Mr. Williams: This would be very desirable. I don't know how practical it would be.

3:40 p.m.

Mr. Nillots: That's right. In order to reduce the cost, Mr. Williams--I'm very, very grateful that you brought this up--I suggest that we limit the situations where he can intervene. For instance, where an individual does have connections in the area--that is, he has got a wife, he has got brothers and so on--he wouldn't have this (inaudible) as such, because otherwise we will have 18 divisions and it is going to be extremely expensive. So he would come in at a later stage.

Mr. Williams: There are so many new ideas in your submission. You don't have any written copies of your submissions at all? I don't think we can get into all of those today, but it is certainly something we should have.

Mr. Nillots: I did want to type an outline, but I figured it was going to take me at least eight hours to do that. I use only one finger, so, being a lazy man, I said "okay."

Mr. Williams: We will have to read the transcripts of the evidence.

Mr. Nillots: But I could be persuaded to work at it for maybe two or three days and make sure you get an outline.

Mr. Williams: Thank you.

Mr. Philip: I must confess that I have lived in or visited to some extent other jurisdictions where some of your ideas certainly have more relevance than they do to Metropolitan Toronto, and I have trouble relating to some of the procedures that you are advocating. It's almost like using an elephant gun to kill a fly. I really don't think we have a situation in Toronto where those kinds of extreme measures are needed. Maybe you can comment on that.

While you're doing that, since you are going outside our jurisdiction and gave numerous examples that you admitted were not completely analogous to our situation, I wonder if you would comment on the Globe and Mail article called "Britain's Summer Riots: A Tale of Two Worlds"--you did mention the situation in Britain--in which the chief conclusion of "the post-riot inquiries, official and unofficial," was that "perhaps the most dangerous of all, they were perceived by many inner-city residents as a complete law unto themselves, because they controlled the complaints procedure against themselves."

Essentially what the article, then, is saying is that the experience and the reports coming out after those riots in Britain, which you mentioned in your brief to this committee, concluded that any investigation of the police by themselves was

simply not workable. I wonder if you would comment on that.

Mr. Nillots: The idea of peer review as such goes back quite a long time. We do have the accountants and the doctors and the lawyers, who more or less police themselves, and from time to time we hear complaints against members of these bodies. I think that if you do introduce this idea of compensation and a little demonstration of good faith on the part of the police--you know, they are making a great deal of money, \$27,000 a year for a constable--one can only take (inaudible) for so long, defending a fellow officer by lying on his behalf or by falsifying documents on his behalf; one can only do it for so long.

I think there is room whereby the police can win the confidence of a great many individuals if there is a chance of getting a proctor on the scene. Right now the weakness, as I see it, is that you are always going to have a complaints commissioner who is going to reconstruct an incident that happened three weeks ago or five months ago or seven months ago in order to determine whom to believe.

In the Morand report, for instance, we have an individual who made the claim that the police had placed his penis in a stapler and pressed on it, or something like that. Some people had difficulty believing him. Where you have a proctor who has access to a police station and to a suspect, say on a three-hourly basis, he can see a fresh wound and be able to decide right on the spot whether or not to bring the public complaints commissioner on the scene.

Frankly, it is up to the police, really, to demonstrate their good faith. The idea of peer review will continue to be with us for a long time.

Mr. Philip: Can you name one profession that actually disciplines itself in the way that's outlined in this bill?

Mr. Nillots: I mentioned the doctors and the--

Mr. Philip: So if I had a complaint against the doctor at the Etobicoke General he would be investigated by a doctor in that hospital and the judgement would be made by the management of that hospital?

Mr. Nillots: No. From what I--

Mr. Philip: That's what the police bill does.

Mr. MacQuarrie: As far as hospital privileges go.

Mr. Nillots: From what I know, ever since we had these troubles with this malpractice against doctors, they did set up some kind of in-house peer review system whereby they can decide for themselves whether a given doctor has followed procedures in treating a patient for this or that disease.

Mr. Philip: But he would be examined, or the inquiry would be done, not by doctors in the hospital and not by his

employer but rather by an independent group, namely, the College of Physicians and Surgeons.

Mr. Mitchell: Who are still doctors. Don't try to separate it that fine, Mr. Philip; they are still doctors.

Mr. Philip: Right, Mr. Mitchell. And perhaps you haven't understood all of the groups that have appeared before you that have been asking for independent investigators--

Mr. Mitchell: I have looked at it as carefully as you, Mr. Philip.

Mr. Philip: If you would be quiet enough to listen you just might learn something.

Mr. Mitchell: Well, it's hard to say from the direction it's coming.

Mr. Philip: The independent investigators would, of course, have proper police training and be qualified as investigators. Nobody has suggested that you get somebody off the street. And in fact in each of the professions nowhere does the specific employer or, indeed, do people in that particular employment investigate a fellow employee.

Mr. Mitchell: In fact it has just been stated, Mr. Philip, that in many cases the hospital internally does do an examination as to, as Mr. MacQuarrie stated, revoking privileges and so on. That has gone on.

Mr. Philip: Only after the College of Physicians and Surgeons has passed judgement that those privileges should be revoked.

Mr. Mitchell: Not necessarily so.

Mr. Philip: Of course it does.

Mr. Mitchell: Mind you, I stand to be corrected.

Mr. Nillots: Mr. Philip, there is also another danger. For instance, when Mr. Laws was making his presentation I heard him mention the human rights commission. The human rights commission has been independent, but it hasn't won the confidence of a vast majority of the people simply because they had independence.

We have the Workmen's Compensation Board, which has been independent since about 1914 or 1915, and every now and then you do hear complaints against the Workmen's Compensation Board. The very minute you set up an independent complaints board the workers are going to join the various labour unions, they are going to be tied down by their own bureaucratic self-interest, and so on and so on.

There is also a chance that since they will be working with the police on a daily or yearly basis they will come to see things

from the policemen's point of view. We all know that from time to time they say customers are too touchy, they are too sensitive and so on. So you would have these previous complaints.

This is why I think we should have this proctor who will go to a police station from time to time and make sure that a suspect under detention is treated well.

Mr. Philip: May I ask whom you are representing?

Mr. Nillots: Myself.

Mr. Philip: Just yourself. You do not belong to any particular organization?

Mr. Nillots: I don't belong to--I am as independent as--

Mr. Philip: Are you employed at present in police work?

Mr. Nillots: No, not in police work. I do have a small business doing research for people. I retrieve legal materials, among other things, for practising lawyers for a fee.

Mr. Philip: Are you doing any contract work for the government at the present time?

Mr. Nillots: No.

Mr. Philip: Fine.

Mr. Chairman: Have you any questions of Mr. Nillots? No? Fine. Thank you very much, sir.

Our next witness is, I believe--

3:50 p.m.

Mr. MacQuarrie: I thought I understood Mr. Philip to say that after we heard this witness, who was a most interesting witness with a very well-thought-out presentation, he had a motion that he wanted to put before the committee.

Mr. Philip: I think it's my prerogative to decide when I want to put a motion on. I'll advise the chair.

Mr. Chairman: Thank you. Mr. Da Silva?

An hon. member: Besides, we only have three votes now, Mr. Piché: the two Liberals, and myself. That means four votes. It would be a tie vote, and it would put you in an awkward position.

An hon. member: I'm in trouble.

Mr. Chairman: I believe this is an oral presentation only; there is no brief. Is that correct?

Mr. Da Silva: That's right. I have it typed up, and if the committee wishes you can have photocopies of it after.

Mr. Chairman: Thank you, we would. You are representing the Toronto Committee of the Communist Party of Canada?

Mr. Da Silva: That's right.

Mr. Chairman: Would you proceed?

Mr. Da Silva: Ladies and gentlemen, members of the committee, the Metropolitan Toronto Committee of the Communist Party of Canada has taken an active interest in this matter of the procedure of investigating complaints against the police since Bill 68 was publicly announced.

Our party associates itself with the demand of the Coalition against Bill 68 that this bill be withdrawn and replaced with a truly effective police complaints procedure for Metropolitan Toronto. With one minor exception this bill is identical to Bill 47. We welcomed the defeat of that bill in the Legislature in June of 1980 by the Liberal and NDP parties.

Bill 68 is totally unacceptable. It does not have the support of any ethnic or minority group. This bill is so flawed that it must be scrapped.

First of all, the police are still investigating themselves. The power of the public complaints commissioner is so restricted that his role is virtually useless. Mr. Sidney Linden himself said in a Globe and Mail article of September 29 that the police could probably keep him tied up in court during the initial investigation of a complaint no matter what the legislation says.

With the police handling the initial investigation it would not appear to the complainant or to the public that such a procedure is fair, and with justification on their part. A complaints procedure must have independent civilian investigators. Both the Canadian and Ontario human rights commissions use such investigators.

Bill 68 gives the police greater protection than is enjoyed by doctors, lawyers or other professionals who are suspected of misconduct involving members of the public. In actual fact this bill will still allow the police the right to judge the accuracy of a complaint, and will also enable the force to discourage complaints by charging people with public mischief.

I think the committee has heard the representation from the Coalition against Bill 68. We support many of the points raised here regarding some of the rights that police enjoy other than other professionals, so we support many of the points raised: for instance, the right to be informed before the investigation--the right for the police officer to be informed before investigation; the right to examine documentary evidence, and the complainant has no right to see the evidence of the officer, on the other hand; the right of the officer to remain silent, when in cases of doctors and other professionals they have to testify; the question of proving beyond a reasonable doubt.

One of the worst, which would seem very clearly unfair, is the one where the defence costs of an officer would be covered by the police commission while there is no provision for the complainant at all in the bill for that.

These provisions reflect the undemocratic nature of this bill. It is a whitewash by the Tory government of a very serious problem. The provincial government claims that Bill 68 will protect citizens from police abuse. That is not true. In fact, this bill will weaken democracy.

This is clear from the many concerns voiced by the ethnic and minority communities over the question of racism on the police force. This bill will in no way convince members of the ethnic and minority communities that they will be protected from racial abuse by police officers.

There is no doubt that racism infects the police, but the police are not the source of racism; the police are an instrument of racism in the service of monopoly rule. The Communist Party's position is that racism in Canada is practised in a thousand covert and overt ways. All have to be exposed and fought, not just one manifestation that is in the police force.

The Tory government must recognize that racism is a crime and it must be dealt with as such. There are many international bodies--the UN and documents that came out of the Nuremberg trials--that say racism is a crime and the government should recognize it.

Bill 68 likewise will not allay the fears of striking workers who have experienced over many years the use of police officers as strikebreakers. Just one example is the brutal force used by the police against striking women workers from the Portuguese-Canadian community recently. As workers and as members of a minority community, Bill 68 would not have offered them protection from the police abuse they experienced.

I would just like to quote the Ontario Federation of Labour, which represents 800,000 workers in this province. It passed a resolution at its last convention in November 1980: "Be it resolved that the OFL inform the Ontario government to enact legislation that would forbid provincial and municipal police forces to act as strikebreakers where industrial disputes are being conducted legally and shall not escort persons either on foot or in vehicles across lawful picket lines being maintained by unions on strike."

Social unrest is growing in Metro Toronto. It has arisen out of the disastrous policies being pursued by big business and their governments in Queen's Park and Ottawa. This means that the instances of legitimate dissent will increase. An effective complaints procedure must protect workers and minorities from any interference with their legitimate dissent. The responsibility of democratically elected officials is to deal with the causes of social unrest. These include chronic unemployment and inflation, poverty, poor housing, racism, sexism and police abuse. Elected officials who deal with one of these ills by legislating in such

useless bills do so at their political peril. They will be held accountable.

The Communist Party demands that Bill 68 be withdrawn and that a new police complaints bill be introduced which would include the establishment of a civilian review board with its own independent civilian investigators which will be responsible for all complaints from the time they are made. The board must be composed of representatives from the labour movement and ethnic and minority communities. This board must have all the powers necessary to carry out effective investigations.

Police should have no greater protection than lawyers and doctors, as was stated in the Coalition against Bill 68 pamphlet. Further, we demand that the Metro Toronto police force be turned over to the democratically elected representatives of the Metro regional council. Justice must not only be done but it must be seen to be done. Scrap Bill 68. Thank you.

Mr. Wrye: Mr. Chairman, I do not want to get into a long series of questions because there are certainly areas of this brief with which I disagree violently. I did ask this of those who appeared on behalf of the Coalition against Bill 68 and you have repeated one of their contentions which bothers me. On the one hand you suggest that at the outset of an investigation the police be treated at the same level as if being subjected to a criminal investigation--that is that they not be informed they are being investigated.

Then later on you attack the criminal nature of the findings that are necessary and that is reasonable doubt. It just seems to me you are trying to stack the deck against the police. You cannot say at the beginning, "We will treat you as if you are subject to a criminal investigation and then at the end we will ask simply for a balance of probabilities, rather than reasonable doubt, because it isn't really a criminal case, it is only a complaints case." There is no consistency in that approach. There is as little consistency in that approach, I would say, as there is in the bill.

Mr. Da Silva: I think the main point we are concerned about is that first of all, as I said in my brief, this bill does not reflect that ethnic and other minority communities are not supporting it and they do not see it reflecting in any way a fair deal in terms of investigation.

I know it was raised by previous speakers regarding doctors and lawyers, which has been raised as well in this pamphlet by the coalition. Doctors and lawyers do have bodies which investigate complaints, but also there is a procedure where the police, if a doctor has committed a certain act, can lay a charge--can investigate independent of that board.

4 p.m.

What we have in this bill is that 30 days before a public commissioner--in the first place we do not support just one commissioner; we think it should be a board which has

representatives from the labour movement as well as from ethnic and minority communities--should be given the powers to investigate. It should not be held up for 30 days as the bill is proposing and which which Mr. Linden himself has admitted.

Mr. Wrye: I only put that to you by way of suggesting when you talk about a perception of justice being done, you must surely include the 5,000 men and women of the Metropolitan Toronto Police force who surely wish to have as much as yourself or any other group that appeared before us out of this bill, a bill that is fair to them, that does not prejudge them as guilty before it begins. I think that kind of a prejudging would be as unfair as a lot of the aspects of this present bill are.

Mr. Da Silva: We can go more into the question of the police having the right to lay a criminal charge for public mischief against a person.

Mr. Wrye: Why should they not have that right? We have heard that a number of times and I realize what you are getting at, but quite frankly I am sure in the history of Metropolitan Toronto there has been at least one very malicious and frivolous complaint against the police. It seems to me we should not be wasting the time of the police or even the public complaints commissioner with a maliciously frivolous complaint. That would end that kind of practice very quickly.

I am not trying to intimidate any member of the community from laying a complaint, but whether we have the police investigating themselves or a public complaints commissioner, surely it is to everybody's benefit to say to those who would be malicious in that way--and I mean malicious as opposed to having an honest and genuine disagreement--

Mr. Da Silva: The question is who will make judgement on what is malicious. A second question is the prominence it is given in terms of the bill. For instance, we have libraries and we have public parks. Most of the public do not abuse them, but you might find in some instances some people do abuse a library and do abuse a public park. But it is not made prominent in order to discourage people from using libraries.

In this bill it is given prominence and it does make people afraid they cannot go to the police and make a complaint and have it justified. We have seen examples of it. I do not think we are talking in the abstract. We have seen examples around the Albert Johnson case. Before Albert Johnson was ever killed he made a complaint to the human rights commission and nothing was done about it. That situation got worse until he was killed.

The question we are concerned about is not discussing particular points which we have to, as you are questioning. The point is the bill as a whole should be scrapped. It is being demanded by many different organizations in the ethnic and minority communities--many different organizations of all ideologies. You certainly cannot say the National Black Coalition--that organization is against the bill. I think the committee has to take account of this. Throughout the minority and

ethnic communities of whatever ideology, these people are not satisfied with this bill.

Mr. Wrye: I appreciate what you are saying. I am just questioning in a rather sceptical fashion some of the proposals you would have to replace what we have. I agree with you that it is a bad piece of legislation. I do not think we need to scrap it. We can amend it pretty quickly with the concurrence of this committee. I do not think it needs to be withdrawn. I think we know what is wrong with it.

Mr. Williams: Mr. Da Silva, you indicate you are the Metro organizer of the Toronto Committee of the Communist Party of Canada. What is your membership at the present time?

Mr. Da Silva: My membership?

Mr. Williams: Of the Toronto organization.

Mr. Da Silva: I do not see how that question is relevant.

Mr. Philip: It is relevant because we have asked that question of other groups just to find out exactly who they represent. I think Mr. Williams' question is a valid one.

Mr. Da Silva: Mr. Chairman, I cannot answer it. I do not know. I do not know the exact number.

Mr. Williams: You have no idea of the--

Mr. Da Silva: I can tell you what we do. We have branch organizations, like other political parties, and we have 36 in Metro Toronto.

Mr. Williams: Thirty-six members?

Mr. Da Silva: Thirty-six branch organizations.

Mr. Williams: Thirty-six branch organizations.

Mr. Da Silva: Just as the Conservative Party, Liberal Party and NDP have branch associations; we have 36 in Metro Toronto.

Mr. Laughren: Most of them in your riding.

Mr. Da Silva: Which riding is that, may I ask?

Mr. Laughren: Oriole riding.

Mr. Williams: It is a very cosmopolitan riding but I think we have astute voters up there. I do not think the Communist Party has too strong a role.

You made reference to the Portuguese-Canadian Association. Are they part of that 36-group membership?

Mr. Da Silva: Not the Portuguese-Canadian Association. I

was referring to Portuguese-Canadian women workers who were workers at the farm here who were on strike and were brutalized by the police.

Mr. Williams: So there is no formal Portuguese-Canadian Communist cell or organization?

Mr. Da Silva: I was speaking about the Portuguese-Canadian community and where women workers were abused at a farm in Ontario where they were on strike. There are other instances; that is just one example I used. There are other instances where the police have been used as strikebreakers and been brutal to workers on the picket lines. That was only one example of how workers as well as members of a minority community in Toronto are abused and how they see the police.

Mr. Williams: But you are not able to give us, in numerical terms, the number of people your 36 units would represent in Metro Toronto.

Mr. Da Silva: No, I can't.

Mr. Williams: I see. I find it rather ironical that you are trying spell out to us what you perceive or envision as being a truly democratic process in this legislation.

Mr. Laughren: Come on, John, we do not need a sermon.

Mr. Williams: I think Mr. Philip was lecturing the last witness so I am just making an observation to this witness.

Mr. Philip: I was not lecturing, I was asking questions, John.

Mr. Williams: I just find it ironical that when the very tenets of your own party organization are diametrically opposed to that democratic process, you are trying to analyse and spell out to us how it should be operated.

Mr. Da Silva: In answer to that, I do not find it ironic at all actually because there are many governments in Canada--provincial governments and the federal government--where we know there has been mismanagement of the economy. In Poland there has been mismanagement and there have been removals of officials from all levels. There is a union existing there.

Many of the questions the workers have raised there are legitimate and they have got action while here workers can go on strike or the CLC can make certain demands and there is no change in government. There is no dismissal of officials who mismanage the economy, who cause inflation. We have had inflation and employment for years now and it is only getting worse. So I do not think it is that ironic. Maybe it seems so to you but I do not think it is ironic when we speak about democracy.

Mr. Williams: I think your remarks perhaps bring something less than an objective point of view as to the democratic process to the presentations. However, I will leave it

at that. Perhaps your friend Mr. Philip will have some questions.

Mr. Philip: Mr. Chairman, Mr. Williams has asked all the questions that I wanted to ask so I will not have any questions at this time.

Mr. Chairman: Thank you. Is there anyone else who wishes to question Mr. Da Silva? No. Thank you very much for appearing before us.

Mr. Da Silva: Thank you for hearing me.

Mr. Chairman: Gentlemen, that completes today's agenda. We will adjourn until tomorrow morning at 10.

The committee adjourned at 4:10 p.m.



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